



सत्यमेव जयते

CONSTITUENT ASSEMBLY DEBATES

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THE CONSTITUENT ASSEMBLY OF INDIA

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Marshal:

SUBEDAR MAJOR HARBANS LAL JAIDKA.

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CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 6th October 1949

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.

ADJOURNMENT OF THE HOUSE

Mr. President : Honourable Members are aware that they have been discussing a very important question in their other capacity in the adjoining room and it has been suggested to me that we might adjourn today to enable the discussion of that question to be completed by this evening. I have said that personally I would have no objection if the Members of the House have no objection. I would therefore like to know if honourable Members have any objection to this.

Honourable Members : We have no objection.

Mr. President : Then we shall adjourn. The next question is, at what time do we meet

MEETING TIME FOR THE HOUSE

Some Honourable Members : At 10 o'clock.

Other Honourable Members : At 9 o'clock.

Seth Govind Das (C.P. & Berar : General) : Let us meet from nine to one.

Mr. President : I do not see which opinion is stronger, but I can see that opinion is divided.

Shri M. Thirumala Rao (Madras : General) : Without consulting the House this meeting was summoned at 11 o'clock today. Let it stand for tomorrow also.

Mr. President : In the Rules it is provided that normally the Assembly will begin at 11 o'clock. I have summoned it at 11 o'clock in accordance with the rules.

Shri M. Thirumala Rao : Then why consult the House now ?

Mr. President : I am consulting it about the adjournment. We adjourn now. From tomorrow it is open to fix any time. But I shall be glad to consult the convenience of Members.

Shri R. K. Sidhwa (C. P. & Berar : General) : Let us have it from 9-30 to 1-30.

Mr. President : That is a compromise between 9 and 10.

Shri Rohini Kumar Chaudhury (Assam : General) : Let it be from 9 to 12-30 or 1 P.M. because at 1-30 one feels terribly hungry.

Pandit Hirday Nath Kunzru (United Provinces : General) : I suggest you should have it from 10 to 1 or from 9 to 1, if you want to have four hours, but not from 9-30 to 1-30.

Shri Alladi Krishnaswami Ayyar (Madras : General): 10 o'clock would be all right. I suggest 10 o'clock as a compromise, and for this reason. We from Madras are generally accustomed to take our meals by 10 o'clock; we do not take lunch and all that kind of thing. Therefore it will be much better to have it at 10 o'clock-because I I will be too late.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : I think, Sir, that 10 to 1 will be all right.

Mr. President : It all depends upon the quantity of work we have to get through.

Shri K. M. Munshi (Bombay : General) : Sometimes we may have to meet twice a day.

Mr. President : I do not object to that. We will adjust 'the timings according to the quantity of work we have to get through.

Shri Biswanath Das (Orissa : General)' 9 to 1 is not acceptable to us. I would suggest 3 to 7 p.m.

Shri R. K. Sidhwa : We must have two sessions later on.

Several Honourable Members : Let it be from 9 to 1.

Mr. President : I would suggest one thing, if the Members do not mind I would suggest that to begin with we start at 10 o'clock tomorrow and then we see what progress we are making. If we find that we are able to complete the work with three hours every day then we can continue from 10 to 1. If on the other hand we find that the progress is not satisfactory then we shall think of changing the timings. If this finds approval we shall begin at 10 o'clock tomorrow.

Several Honourable Members : That is agreeable.

Mr. President : The House stands adjourned till 10 of the Clock tomorrow.

The Assembly adjourned till Ten of the Clock on Friday, the 7th October, 1949.

CONSTITUENT ASSEMBLY OF INDIA

Friday, the 7th October 1949

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 Member took the Pledge and signed the Register:—

Shri Samaldas Laxmidas Gandhi : (Junagadh).

DRAFT CONSTITUTION—(Contd.)

Article 306

Mr. President : We shall now proceed with the consideration of the articles relating to transitory provisions.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Sir, I move:

“That for clauses (a), (b) and (c) of article 306, the following clauses be substituted:—

- “(a) trade and commerce within a State in, and the production, supply and distribution of, cotton and woollen textiles, raw cotton (including ginned cotton and unginced cotton or Kapas), cotton seed, paper (including newsprint), foodstuffs (including edible oilseeds and oil), coal (including coke and derivatives of coal), iron, steel and mica;
- (b) offences against laws with respect to any of the matters mentioned in clause (a), jurisdiction and powers of all courts except the Supreme Court with respect to any of those matters, and fees in respect of any of those matters but not including fees taken in any court.”

The only changes which the amendment seeks to make in the original article 306 are these. From sub-clause (a), it is now proposed to omit petroleum and petroleum products and mechanically propelled vehicles. The reason why petroleum and petroleum products are sought to be omitted from sub-clause (a) is because that item is now included in List I of the Seventh Schedule. Mechanically propelled vehicles are omitted because they are at present decontrolled and they are placed in the Concurrent List. If the Centre wishes to legislate, it can legislate. Sub-clause (b) of the original article, relief and rehabilitation of displaced persons, is no longer necessary because that is also put in the Concurrent List. In regard to sub-clause (c), Inquiries and Statistics is also included in the Concurrent List and therefore this is also omitted. It is only a consequential thing. These are all the changes which this amendment seeks to make in the original article 306.

Mr. President : May I enquire of Dr. Ambedkar? My impression is that cattle fodder including oil cakes and other concentrates was one of the things, adequate control over which was at one time felt necessary. The Government of India Act was sought to be amended; but it would not be amended at the time and considerable difficulty was being felt. I do not know whether you have considered that.

The Honourable Dr. B. R. Ambedkar : This article was re-drafted in consultation with the Industry and Supply Department. We have put in these matters which they thought were necessary to be controlled by the Centre, for a period of five years. If the House thinks that any particular addition may be made to the items included in sub-clause (a), I certainly have no objection.

Mr. President : I speak from my experience which is now rather out of date.

The Honourable Dr. B. R. Ambedkar : I think it is rather desirable to include that item.

Dr. P. S. Deshmukh (C.P. & Berar: General) : That may be done in consultation with the Agriculture Department.

Mr. President : That is what I suggest.

The Honourable Dr. B. R. Ambedkar : I think we shall add that. I can put in, foodstuffs including cattle fodder.

Mr. President : Cattle fodder including oil cakes and other concentrates.

There are certain amendments to this. Amendment No. 2. Dr. Deshmukh.

Dr. P. S. Deshmukh : Sir, I move:

“That in amendment No. 1 above, in the proposed clause (a) of article 306, for the words ‘State in the words ‘State with respect to be substituted.”

“That in amendment No. 1 above, in the proposed clause (a) of article 306, for the words and brackets coal (including coke and derivatives of coal)’ the words ‘coal, coke and derivatives of coal be substituted.”

These are more or less of a drafting nature, although the first one that I have moved would make some difference if my wording is preferred. However, I do not wish to press them and I am prepared to leave them for the consideration of the Drafting Committee.

Mr. President : There is an amendment printed in Volume II in the name of Pandit Kunzru.

Shri Brajeshwar Prasad (Bihar: General): I have an amendment Sir.

Mr. President : Yes, you can move it.

Shri Brajeshwar Prasad : Sir, I move:

“That with reference to amendments Nos. 3286 and 3287 of the List of Amendments (Volume II) in article 306, for the word ‘five’ the word ‘fifteen’ be substituted.”

The members of the Drafting Committee are of opinion that they will be able to tide over the economic difficulties with which we are confronted in the transitional period within a period, of five years. That is the only purpose why article 306 has been brought in this Draft Constitution. I am of opinion that within five years they will not succeed in their venture. The economic crisis with which we are confronted is not only of a national character. It has an international bearing. I am of opinion that, as a result of the economic structure of the capitalist society and as a result of the war, the whole structure of human society is crumbling down and India especially is passing through a period of decadence and decline. The entire fabric of our society is in the melting pot. I feel that revolution is knocking at our doors. Matters like foodstuffs and minerals should have been kept within the purview of the Government of India, but now the only thing that we can do is to keep these under the Government of India at least for the transitional period. The period of transitions will cover a period of fifteen years and not five years.

But no crisis can continue for a longer period and if it continues longer, it will mean the end of the State. Either we tide over the crisis or the crisis will tide over us. It will bring utter chaos such as we are witnessing in China today if the crisis continues for more than fifteen years. So we must surmount these difficulties within this period.

The basis for this Constitution is federal in structure. I hold the opinion that centrifugal forces will become so strong that the process of amendment will have to be resorted to in order to change this Constitution. We must take into consideration the political facts of our life. With this background in view article 306 ought to be modified. My amendment is very reasonable., In the concluding portion of article 306 it has been said that all laws passed under this article to the extent to which they are inconsistent with the main provisions of this Constitution will cease to operate. I think this is unnecessary and undesirable. The work of centralization which will be achieved within five years should not be undone. The provincial Governments must accept the laws passed within this period of five years or fifteen years if the House accepts my amendment. The scope of article 306 is also limited from another point of view. We have given powers to Parliament to deal with production, supply and distribution etc., of these commodities. The entire gamut of these subjects ought to have been brought within the purview of the Government of India. Why this limited sphere ? This limited power is not desirable. I think fissiparous forces ought to be circumvented if we are to become a powerful nation.

Pandit Hirday Nath Kunzru (United Provinces : General): Sir, I move:

“That in clause (a) of article 306 after the word ‘coal’ the words ‘charcoal, firewood’ be inserted.”

I am sure the House is well aware that under the Defence of India Act the prices of charcoal and firewood were controlled. But for the power delegated to the provinces by the Government of India the provinces would not have been in a position to control the prices of these two articles. The Defence of India Act is no longer in force and it is therefore desirable to amend clause (a) of the article placed before us by Dr. Ambedkar in order to include these two things. I understand that after the Defence of India Act expired these things continue to be controlled by the Government of India under the provisions of an Act amending the Government of India Act, 1935, passed by Parliament in 1946. There is no mention of charcoal or firewood there. But it is believed that they are included among the derivatives of coal. I am totally unable to accept this explanation. No one has challenged the action taken by the authorities in fixing the prices of charcoal and firewood but had anybody done so, I doubt whether any Court would have accepted the plea that charcoal or firewood was a derivative of coal. What we understand by coal, generally speaking is anthracite. Charcoal is the derivative of wood, and certainly not a derivative of coal. Neither charcoal nor wood can be regarded as a derivative of coal. It is, therefore, necessary to provide for the control of the Government of India expressly in respect of both these things. The common man is concerned with them. When we are providing for the control of the Government of India over a number of other things, it is both desirable and necessary that we should think of the needs of the poor man too, and take power in the Constitution to control the prices of those articles also, that affect his household budget. We all know how serious the position was during the war, in respect of these articles, and we also know how high their prices still are. We usually think of the high prices of foodstuffs, and few people realise that the high prices of charcoal and firewood are matters of as much anxiety to the poor man as the high prices of the foodstuffs.

[Pandit Hirday Nath Kunzru]

As Dr. Ambedkar is in a mood to consider suggestions to amend the clauses placed before him, I hope that he will take this matter too into consideration and take power to see that the clause (a) is so amended as to give complete power to the Government of India to control trade in charcoal and firewood also.

Mr. President : These are all the amendments. Does anyone wish to say anything about the original proposition or any of the amendments ?

Prof. Shibban Lal Saksena (United Provinces : General): Mr. President, Sir, in this article, we have provided that certain subjects which normally form part of the State List should be in the Concurrent List for the first five years. At present also there is a similar provision in the Government of India Act (Adaptation) 1946 which is intended to tide over the present period. But the period fixed here in this article seems to me to be too short. This article says that for the first five years these items which are mentioned in the State List, it may be necessary to have in the Concurrent List so that necessary action may be taken by the Parliament. I would in this connection commend the amendment moved by my Friend Shri Brajeshwar Prasad to the effect that this period of five years is too short and that it should be for a longer period. If found unnecessary, we may cut it short, but there is no harm in having provision for a longer period in the Constitution.

Secondly, Sir, I would have liked that the Subject of relief and rehabilitation too had been mentioned in this list of subjects to be put in the Concurrent List. I do not know if it is the intention to omit this Subject from the Concurrent List. If not here, this subject should be mentioned somewhere else in the Constitution so that Parliament may be able to make proper laws for the relief and rehabilitation of millions of people who have been.....

Mr. President : Entry 33 B of Concurrent List includes Relief and Rehabilitation of persons displaced from their original places on account of the partition. So, you will see, it has-been provided.

Prof. Shibban Lal Saksena : Sir, I am glad it has found a place in the Constitution. I will not say anything further about it. I shall withdraw my suggestion, But I feel that the period of five years should be extended.

Mr. President : Does anyone else wish to speak? Dr. Ambedkar?

The Honourable Dr. B. R. Ambedkar : Sir, I have only to say this much. I am not able to accept the amendment moved by Shri Brajeshwar Prasad. With regard to the other amendment suggested by yourself and by my Friend Dr. Kunzru, I may say that I have an open mind and I am prepared to introduce the necessary amendments after consultation with the Ministry of Industry and Supply. Therefore my amendment may be put through now.

Mr. President : And the Ministry of Agriculture also. You may consult that Ministry also.

The Honourable Dr. B. R. Ambedkar : Yes, Sir, I will consult the Ministries concerned.

Mr. President : Subject to what Dr. Ambedkar has said, I will put the article to vote. I take up the amendments first. Amendment No. 2 of Dr. Deshmukh is more or less verbal and he may leave it to the Drafting Committee also No. 3. What about No. 4?

Dr. P. S. Deshmukh : I am not moving it.

Mr. President : Then I put No. 5-amendment of Shri Brajeshwar Prasad.

The question is:

“That with reference to amendments Nos. 3286 and 3287 of the List of Amendments (Vol. 11), in article 306, for the word ‘five’ the word ‘fifteen’ be substituted.”

The amendment was negatived.

Mr. President : Then I put tile amendment moved by Dr. Ambedkar.

The question is:

“That for clauses (a), (b) and (c) of article 306 the following clauses be substituted:—

- ‘(a) trade and commerce within a State in, and the production, supply and distribution of, cotton and woollen textiles, raw cotton (including ginned cotton and unginned cotton or Kapas), cotton seed, paper (including newsprint), foodstuffs (including edible oil-seeds and oil), coal (including coke and derivatives of coal), iron, steel and mica;
- (b) offences against laws with respect to any of the matters mentioned ill clause (a), jurisdiction and powers of all courts except the Supreme Court with respect to any of those matters, and fees in respect of any of those matters but not including fees taken in any court.’”

The amendment was adopted.

Mr. President : Then I put the article as amendment by Dr. Ambedkar’s amendment.

The question is:

“That article 306, as amended, stand part of the Constitution.”

The motion was adopted.

Article 306, as amended, was added to tile Constitution.

Article 309

Mr. President : Then we take up article 309.

The Honourable Dr. B. R. Ambedkar : There is an amendment by Shri Brajeshwar Prasad adding a new article 307A.

Mr. President : But shall we take it up now?

The Honourable Dr. B. R. Ambedkar : It may be kept back.

Shri T. T. Krishnamachari (Madras: General) : ‘The new article suggested by Pandit Thakur Das Bhargava in amendment No. 3303, Volume II may, I think be disposed of.

Mr. President : Well. Pandit Thakur Das Bhargava? He is not in the House. There are two others who have given notice of it. Lala Achint Ram?’ Shri Deshbandhu Gupta? None of them is moving the amendment. The amendment of Mr. Brajeshwar Prasad also cannot be moved.

I will put article 309 to vote. There is no amendment to it.

The question is :

“That article 309 stand part of the Constitution.”

The motion was adopted.

Article 309 was added to the Constitution.

Articles 310-A and 310-11

Shri T. T. Krishnamachari : The next article 310 'Is linked to article 308. These two may be considered together.

Mr. President : Consideration of article 310 is postponed. Then the House will take up consideration of the next articles 310-A and 310-B.

The Honourable Dr. B. R. Ambedkar : Sir, with your permission I move amendment No. 12 in a slightly amended form, thus:

“That after article 310, the following new articles be inserted:—

307 A. The Auditor-General of India holding office immediately before the date of commencement of this Constitution shall, unless he has elected otherwise, become on that date the Comptroller and Auditor-General of India and shall thereupon be entitled to such salaries and allowances and to such rights in respect of leave and pension as are provided for under clause (2) of article 124 of this Constitution in respect of the Comptroller and Auditor-General of India and shall be entitled to continue to hold office until the expiration of his term of office as determined under the provisions (?) which were applicable immediately before such commencement”.

310 B. (1) The members of the Public Service Commission for the Dominion of India holding Office immediately before the date of commencement of this Constitution shall, unless they have elected otherwise, become on that date the members of the Public Service Commission for the Union and shall, notwithstanding anything contained in clauses (1) and (2) of article 285 of this Constitution but subject to the proviso to clause (2) of that article continue to hold office until the expiration of their term of office as determined under the rules which were applicable immediately before such commencement to such members.

(2) The members of a Public Service Commission of a Province or of a Public Service Commission serving the needs of a group of Provinces holding office immediately before the date of commencement of this Constitution shall, unless they have elected otherwise, become on that date the members of the Public Service Commission for the corresponding State or the members of the Joint Public Service Commission serving the needs of the corresponding States, as the case may be, and shall, notwithstanding anything contained in clauses (1) and (2) of article 285 of this Constitution but subject to the proviso to clause (2) of that article, continue to hold office until the expiration of their term of office as determined under the rules which were applicable immediately before such commencement to such members.”

Sir, these articles merely provide for the continuance of certain incumbents ,of the posts which are regulated by the Constitution such as the members of the Public Service Commission and the Auditor-General. There is no matter of principle involved in these articles.

Dr. P. S. Deshmukh : Sir, I move

“That in amendment No. 12 of List I (First Week), in the proposed new article, 310 B, after the words ‘commencement of this Constitution’ wherever they occur, the words ‘whose services have not, for any reason, been terminated’ be inserted.”

I intended to move a similar amendment to article 310 also. My difficulty is that in case the proposed new article stands as it is, the question will arise as to whether every one who happens to be a member of a Service Commission of State even when the States have one combined Commission will have to be continued as a member of the Commission for the group of States. According to the article as it is worded, there will be no power left to the Government but to continue every single individual who is holding any post on the Commission at present even after the commencement of the Constitution. If a member whose services could be terminated on the formation of a joint service commission for a number of States could not be so terminated if the wording of the article is to remain as it is. There is no provision there to terminate the services of some members. Every one would have automatically to be kept on. I think it will lead to considerable expenditure of money. I therefore propose that the words I have suggested may be included so as

to reduce the number of persons who happen to be there in a particular area as members of the public service commission of that area.

The Honourable Dr. B. R. Ambedkar : I do not propose to accept the amendment of Dr. Deshmukh. It is unnecessary.

Mr. President : I will first put the amendment of Dr. Deshmukh to vote.

The question is:

“That in amendment No. 12 of List I (First Week), in the proposed new article 310 B, after the words ‘commencement of this Constitution’ wherever they occur, the words ‘whose services have not, for any reason, been terminated’ be inserted.”

The amendment was negatived.

Mr. President : I will now put the articles contained in the amendment of Dr. Ambedkar one by one to vote.

The question is:

“That after article 310, the following new article be inserted:—

‘310-A. The Auditor-General of India holding office immediately before the date of commencement of this Constitution shall, unless he has elected otherwise, become on that date the Comptroller and Auditor-General of India and shall thereupon be entitled to such salaries and allowances and to such rights in respect of leave and pension as are provided for under clause (2) of article 124 of this Constitution in respect of the Comptroller and Auditor-General of India and shall be entitled to continue to hold office until the expiration of his term of office as determined under the provisions (?) which were applicable immediately before such commencement.’

The motion was adopted

Mr. President : ‘The question is:

“That after article 310 A, the following new article be inserted:—

310 B. (1) The members of the public Service Commission for the Dominion of India holding office immediately before the date of commencement of this Constitution shall, unless they have elected otherwise, become on that date the members of the Public Service Commission for the Union and shall, notwithstanding anything contained in clauses (1) and (2) of article 285 of this Constitution but subject to the proviso to clause (2) of that article continue to hold office until the expiration of their term of office as determined under the rules which were applicable immediately before such commencement to such members.

(2) The members of a Public Service Commission of a Province or of a Public Service Commission serving the needs of a group of Provinces holding office immediately before the date of commencement of this Constitution shall, unless they have elected otherwise, become on that date members of the Public Service Commission for the corresponding State or the members of the Joint Public Service Commission serving the needs of the corresponding States, as the case may be, and shall, notwithstanding anything contained in clauses (1) and (2) of article 285 of this Constitution but subject to the proviso to clause (2) of that article, continue to hold office until the expiration of their term of office as determined under the rules which were applicable immediately before such commencement to such members.’ “

The motion was adopted.

Articles 310-A and 310-B were added to the Constitution.

Article 311A

The Honourable Dr. B. R. Ambedkar : Sir I move:

“That after article 311, the following new article be inserted:—

‘311A. (1) Such person as the Constituent Assembly of the Dominion of India shall have elected in this behalf shall be the Provisional President of India until a President has been elected in accordance with the provisions contained in Chapter I of Part V of this Constitution and has entered upon his office,

[The Honourable Dr. B. R. Ambedkar]

- (2) In the event of the occurrence of any vacancy in the office of the Provisional President by reason of his death, resignation, or removal, or otherwise, it shall be filled by a person elected in this behalf by the Provisional Parliament functioning under article 311 of this Constitution, and until a person is so elected, the Chief Justice of India shall act as the Provisional President’.”

Mr. President : There are two amendments to this. One is for the deletion of the word “provisional” before the word “President”:

The Honourable Dr. B. R. Ambedkar : Sir, I move:

“That in amendment No. 28 of List IT (First Week), in clause (1) of the proposed article 311A the word ‘provisional’ be deleted.”

“That in amendment No. 28 of List 11 (First Week), in clause (2) of the proposed article 31 1 A, for the words ‘provisional President’ in the first place where they occur the words ‘President so elected by the Constituent Assembly of the Dominion of India,’ be substituted.”

“That in amendment No. 28 of List It (First Week), in clause (2) of the proposed article 31 1 A, for the words ‘the Provisional President’ in the second place where they occur, the word ‘President’ be substituted.”

Dr. P. S. Deshmukh : Since the principle underlying my amendment has been accepted, I do not see any reason for moving my amendment.

Mr. President : The article and the amendments are now open to discussion.

Shri R. K. Sidhwa (C. P. & Berar: General): I have an amendment standing in my name:

“That in amendment No. 13 in the proposed new article 31 1 B for the word ‘provisional’ wherever it occurs, the word ‘first’ be substituted.”

I am glad, Sir, that Dr. Ambedkar has agreed to leave out the word “provisional” before the word “President”, because I cannot see how you can have a provisional President. The House, duly constituted, will elect the President. He may be the first President, but you cannot call him “provisional”. The word “provisional” will mean that somebody has nominated him. I do not want any aspersion cast on our first President and I therefore thought that the word “first” will be more appropriate. Under the Government of India Act of 1935 when Orissa was separated from Bihar and N.W.F. Province was created into a separate province, and when Sind was separated from Bombay and constituted as a separate province, during the transitory period, the Governors of these provinces were called the first Governors although they were nominated. I think that the word “provisional” will be unjustified and unfair to use in connection with our first President whom we shall be electing under the provisions of this Constitution. I am therefore glad that the Drafting Committee has omitted the word “provisional”. I would prefer the word “first” but the omission of the word “provisional” serves my purpose, and I have no objection to it. With these words, I commend the amendment for the acceptance of the House.

Prof. Shibban Lal Saksena : Mr. President, Sir, clause (2) of article 311A as moved by Dr. Ambedkar says that in the event of the occurrence of any vacancy in the office of the Provisional President, it shall be filled by a person elected in this behalf by the Provisional Parliament functioning under article 311 of this Constitution. My point is that Parliament should not be called “provisional”. I hope Dr. Ambedkar will see the reasonableness of this suggestion and will omit the word “provisional” before the word “Parliament”, as he has done in the case of the President.

The Honourable Dr. B. R. Ambedkar : I do not think there can be any great objection to the retention of the words “provisional Parliament” I do

not propose to make any change in that. It would not be called the "Provisional Parliament" but for purposes of the language of this article I think it is necessary to say that it is the Provisional Parliament.

Shri R. K. Sidhwa: But I thought that Dr. Ambedkar has agreed to omit the word "Provisional".

Mr. President : No, this is with reference to the Parliament. Mr. Shibban Lal Saksena wanted that the word "Provisional" should be omitted before the word "Parliament".

Dr. P. S. Deshmukh : If that is so, I would like to move my amendment for the deletion of the word "Provisional" in the other place also.

Mr. President : Does your amendment refer to Parliament also ?

Dr. P. S. Deshmukh : Yes, Sir.

Mr. President : Mr. Shibban Lal Saksena has moved it. That will be put to the vote. I will now put the various amendments to vote. The question is:

"That in amendment No. 23 of List 11 (First Week), in clause (1) of the proposed article 311A the word 'provisional' be deleted".

The amendment was adopted.

The Honourable Shri K. Santhanam (Madras: General): Does it mean the word "Provisional" will be deleted before the word "Parliament" also ?

Mr. President : No; that comes later on.

The question is—

"That in amendment No. 28 of List 11 First Week, in clause (2) of the proposed article 311A, for the words 'provisional President' in the first place where they occur, the words 'President so elected by the Constituent Assembly of the Dominion of India' be substituted."

The amendment was adopted.

Mr. President : The question is:

"That in amendment No. 28 of List II (First Week), in clause (2) of the proposed article 311A, for the words 'the provisional president' in the second place where they occur, the word 'President' be substituted."

The amendment was adopted.

Mr. President : Then I take up the amendment which was sought to be moved by Dr. Deshmukh but which was actually moved by Mr. Shibban Lal Saksena.

The question is:

"That in clause (2) of the proposed new article 311 A, the word 'provisional' occurring before the word 'Parliament' be deleted."

The amendment was negatived.

Mr. President : The question is:

"That article 311 A, as amended stand part of the Constitution".

The motion was adopted.

Article 311A, as amended, was added to the Constitution.

Article 311-B

The Honourable Dr. B. R. Ambedkar : Sir, I move:

“That after article 311-A the following new article be inserted:—

‘311 B. Such persons as the provisional Council of Ministers of the Ministers of the provisional President.	the Council of Ministers of the provisional President under this Constitution, and until appointments are made, all persons holding office as Ministers for the Dominion of India immediately before the commencement of the Constitution shall become and shall continue to hold office as members of the Council of Ministers of the provisional President under the Constitution.’ “
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Dr. P. S. Deshmukh : Sir, I thank you for giving me this opportunity of moving this amendment of mine. I move:

“That in amendment No. 13 above, in the proposed new article 31 1B, the word ‘provisional’, wherever it occurs, be deleted.”

May I add that since the Honourable Dr. Ambedkar has accepted the sense behind this amendment I do not wish to take up the time of the House any more. It becomes more or less a consequential amendment.

(Amendment No. 15 was not moved.)

Mr. President : I take it that Dr. Ambedkar accepts the amendment.

The Honourable Dr. B. R. Ambedkar : Yes, Sir, I do.

Prof. Shibban Lal Saksena : Sir, I cannot understand this provision. On the day the new Constitution comes into force the present ministry ceases to exist and a new Council of Ministers should be sworn in. There should not be a provision as:

“all persons holding office as Ministers for the Dominion of India immediately before the commencement of this Constitution shall become and shall continue to hold office as members of the Council of Ministers of the provisional President under this Constitution.”

I think the first act of the new Constitution must be the swearing in of the new Council of Ministers. When the new Constitution comes into being it is but meet and proper that the President should call in the new Ministers to their office. If we want to provide for something, we should provide for a care-taker ministry. Let the old Ministry not be called the Ministry of the new President. I would therefore suggest that this article should be amended. You may say that until the President appoints the new Ministry the old ministry shall continue as a care-taker ministry. It looks odd that the old ministers should automatically become the Council of Ministers of the new President. There is some lacuna which should be remedied so that on the 26th January 1950 when the new Constitution comes into force the old Ministers become care-taker Ministers till the new Ministers take charge of the Government that same day.

Shri H. V. Kamath (C.P. & Berar : General): Sir, there is some force in Mr. Saksena’s contention. The point that he has sought to make out is that on the day the new constitution comes into effect the whole Council of Ministers must formally cease to exist, and they might be sworn in again. I think this is very desirable when we are promulgating the new Republic and inaugurating this new Constitution. It may be necessary that the same Ministers should be sworn in on that day.

An Honourable Member : Not necessary.

Shri H. V. Kamath : It may not be necessary, but it is very probable that the same Ministers who were Ministers before the commencement of the new

Constitution may be sworn in. But from the point of view of constitutional propriety and decorum I think we will be acting wisely if the Council of Ministers bodily, en bloc, resigned on that day. The Prime Minister should submit the resignation of the Council of Ministers to the President and the President should call upon the Leader of the House to form a new Cabinet under the appropriate article of the new Constitution.

There is another point in this connection. Our Constitution has adopted an oath of office which believe is slightly different from the old oath under which ministers were sworn in. We have now an invocation of God in the oath, but if a minister happens to be an agnostic or atheist he may make solemn affirmation. Considering this matter from these various aspects I think it would be wise on our part to provide for this contingency, and to lay down that on the day the Republic is proclaimed and the Constitution inaugurated the Council of Ministers should resign formally and the President calls upon the Leader of the House to form his own cabinet again.

There is one more point which I would like Dr. Ambedkar to consider. It is a verbal objection. Are Dr. Ambedkar and the Drafting Committee quite sure that this expression "Ministers for the Dominion of India" is quite correct? I do not like it myself. I object to the word "for". Is it not more correct to say "Ministers of the Dominion Government of India" or "Ministers of the Dominion of India"? "For" is not quite appropriate, but if Dr. Ambedkar and other linguistic experts hold that "for" is all right, I have nothing to say.

Shri Brajeshwar Prasad : Sir, I had no intention of speaking on this occasion but since my two friends Messers Shibban Lal Saksena and Kamath spoke on the subject I take this opportunity to express my own views on the amendment. It would have been better if this word "Dominion" had been eliminated from this article. Personally I feel that with the advent of a new age and with the establishment of a Republic in India we should have a new Cabinet. I know that there are three figures in the Cabinet which are more or less indispensable. I refer to our great leader Pandit Nehru, the valiant Sardar and the greatest scholar of Asia, the great Maulana Saheb. These three figures are indispensable in the Cabinet. Other members of the Cabinet are more or less in the nature of migratory birds

Mr. President : I do not think the honourable Member is justified in making personal references to individual Ministers. We are not concerned with them. We are taking the ministry as a whole.

Shri Brajeshwar Prasad : I am sorry, Sir, if the word "migratory" means any reflection on our able Ministers. I thought that with the establishment of a real Republic in this country we should have men in the Cabinet who will command the enthusiastic support of young India as well. Therefore it is in the fitness of things that a wider range of choice is left in the President who may take new blood into the Cabinet which may be in accord with the needs of the hour. As far as the present members of the Cabinet are concerned I have nothing to speak against them personally, but I feel that with the new age new men are required. It is no use putting old wine in new bottles.

Mr. Naziruddin Ahmad (West Bengal : Muslim): Mr. President, Sir, the point, though a very short one, raises a question of constitutional form, I think when the Governor-General ceases to function and a new President comes to take his place, the Ministers should vacate and should be reappointed. This seems to follow logically from first principles. The first reason is that the existing Ministers hold office "during the pleasure of the Governor-General". The "Governor-General" means the Governor-General who is now functioning. This Governor-General would be defunct at the inauguration of the Constitution and would be replaced by some other official,—the Provisional President. There will therefore be a break on the 26th of January next, or whatever date is ultimately agreed upon, on which the new Constitution comes into effect.

[Mr. Naziruddin Ahmad]

As the Ministers appointed by the Governor-General and as they are constitutionally to hold office “during his pleasure”, as soon as the office of the Governor-General becomes defunct, he ceases to be subject to any pleasure or pain and therefore the Ministers will no longer continue to hold office during his pleasure. Somebody else’s pleasure—his successor’s pleasure—comes to occupy the field. Pleasure is a personal factor and the successor’s pleasure will not necessarily agree with that of his predecessor. Therefore the new President should appoint or reappoint the Ministers to indicate his own pleasure. Till the appointment is made, the old Ministry may at the most function as a Care-taker Ministry.

This is no doubt a matter affecting constitutional form, but it seems to me of fundamental importance.

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, this article 310 B. is merely a formal article permitting the President, so to say, to carry over the Ministry that may be existing immediately before the commencement of the Constitution. This article is analogous to the other articles which we have already passed, relating to members of the Public Service Commission and to the Auditor-General. Consequently there is really no fundamental difference between those articles and this article. If those who have commented upon the provisions of this article 311 B contend that no Ministry ought to be appointed or function on the 26th of January, 1950, unless that Ministry has the confidence of the Parliament, I am quite prepared to accept that contention. But I do not quite understand how this article makes it impossible either for the Parliament or for the Ministry to obtain what might be called a vote of confidence. If the members of Parliament do not think that the existing Ministry is competent enough to discharge the functions which it has to perform, it is open to this House before the 26th of January to pass a vote of no confidence in the Ministry and thereby dismiss the Ministry. It would be equally open to the Prime Minister, before submitting the names of the members of the Cabinet to the provisional President, to obtain also a, positive vote of confidence in himself and his Ministry from the House. If neither the Prime Minister nor the House desires to apply the-test of no confidence or confidence before the 26th of January, 1950- assuming that to be the date for the operation of the Constitution-this article 31 1 B does not, take away the power from the House after the 26th of January to table a no-confidence motion and to dismiss that Ministry. Nor is the Prime Minister prevented by this article from coming forward after the appointment of the Ministry to obtain a positive vote of confidence in himself and the Ministry.

Therefore it seems to me that those who have commented upon the provisions of article 311B. probably under the impression that this is a surreptitious attempt on the part of the existing Ministry to smuggle themselves, so to say, under the New Constitution, have been labouring under a misapprehension. The doors are perfectly open at present, and even after the 26th of January, for the House to take such action as the House prefers and to dismiss the Ministry if they do not like it. Therefore, this article is merely, as I said, a formal article permitting the carrying over of the existing Ministry into the New Constitution.

Shri H. V. Kamath : The Honourable Dr. Ambedkar has not answered the points raised by me. What about the oath of office I referred to ?

The Honourable Dr. B. R. Ambedkar : That will be taken undoubtedly. “Appointment” means taking the oath office. Otherwise there is no appointment.

Shri H.V. Kamath : On that very day?

The Honourable Dr. B. R. Ambedkar : Yes, certainly. On that very day. "Appointment" includes oath of office.

Mr. President : I shall put Dr. Deshmukh's amendment to vote-I take it that it has been accepted by the Mover.

The question is :

"That in amendment No. 13 above, in the proposed new article 311B, the word 'provisional' Wherever it occurs, be deleted."

The amendment was adopted.

Mr. President : The question is:

"That the proposed article 311B, as amended, stand part of the Constitution."

The motion was adopted

Article 311B, as amended, was added to the Constitution.

Article 312

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That for article 312, the following article be substituted :—

- '312. (1) Until the House or Houses of the Legislature of each State for the time being specified in Part I of the First Schedule has or have been duly constituted and summoned to meet for the first section under the provisions of this Constitution, the House or Houses of the Legislature of the corresponding Province functioning immediately before the commencement of this Constitution shall exercise the powers and perform the duties conferred by the provisions of this Constitution on the House or Houses of the Legislature of such State.
- Provisions as to provisional Legislature in each State.
- (2) Notwithstanding anything contained in clause (1) of this article, where a general election to reconstitute the Legislative Assembly of a Province was ordered before the commencement of this Constitution, the election may be completed after such commencement as if this Constitution has not come into operation and the Assembly so reconstituted shall be deemed to be the Legislative Assembly of that Province for the purposes of that clause.
- (3) Any person holding office as Speaker of the Legislative Assembly or President or the Legislative Council of a Province immediately before the commencement of this constitution shall after such commencement be the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, as the case may be of the corresponding State for the time being specified in Part I of the First Schedule while such Assembly or Council functions under clause (1) of this article :

Provided that where a general election was ordered for the reconstitution of the Legislative Assembly of a Province before the commencement of this Constitution and the first meeting of the Assembly as so reconstituted is held after such commencement the provisions of this clause shall not apply and the Assembly as reconstituted shall elect a member of the Assembly as the Speaker thereof.'
 " The provisions are quite clear and I do not think that they require any explanation.

Mr. President : Are there any amendments to this ? I do not see any.

Shri Mahavir Tyagi (United Provinces: General): Sir, I do not think that sub-clause (3) is at all necessary. When we have already said above that the Legislative Assembly of a State or the Legislative Council of a State will remain as it is, it is not necessary that we should also say that the Speakers or the Presidents of the respective Houses will also remain as they are, for, they go with the Houses. Secondly, what I feel is but I do not know Dr. Ambedkar always might again come forward with the plea that I being a layman, he does not take any notice of me—but what feel is that the wording

[Shri Mahavir Tyagi]

perpetuates the Speaker and the President of the Houses. Why should we perpetuate them ? They are liable to be “no-confidenced” out from the Assembly, so to say, but we say they shall remain as Speaker and as the President. Will that not mean that they will be irremovable ? I do not want to emphasise further, I only want to point out these words:—

“Any Person holding office as Speaker of the Legislative Assembly or President of the Legislative Council of a Province immediately before the commencement of the Constitution shall after such commencement be the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, as the case may be.....”

Why should we say that ? And then—

“..... of the corresponding State for the time being specified in Part I of the First Schedule while such Assembly or Council functions under clause (1) of this article”.

So long as those Assemblies and Councils function, the Speakers and Presidents of those Legislative bodies shall remain. Will that not be construed to mean that, even if the Houses do not want them and want to change them, they will not be able to do so ? That is the only little doubt that I wanted to express.

The Honourable Shri K. Santhanam (Madras: General): Mr. President, Sir I am frankly apprehensive of these transitional provisions. I do not see any definite provision fixing a time limit for the duration of these provisional Assemblies and Parliament. When France decided to constitute a Constituent Assembly after the war to frame a Constitution and act also as a provisional Parliament, they fixed a time limit of seven months. They said, “It will enact the constitution within seven months. If it is not able to do so, that Constituent Assembly will stand dissolved and will be re-elected”. Now, if any such provision had been inserted in the constitution of this Constituent Assembly, I feel that this Constitution would have been finished long ago, but because there was no provision for the automatic dissolution of this Constituent Assembly we have now taken three years to frame this Constitution.

I do not know how many years the so-called provisional Parliament and Assemblies will take to conduct elections. I think it will be nothing short of a national disaster if these provisional Parliament and Assemblies perpetuate themselves. It may be *bonafide*, it may be *malafide*, it may be anything. We know what human nature is and faced with the elections on the basis of adult franchise there is quite a possibility that Members may be apprehensive of being not returned and would like to perpetuate themselves for six months, one year or two years.

Shri R. K. Sidhwa : What about Ministers? Are they not apprehensive?

The Honourable Shri K. Santhanam : Sir, Ministers depend upon Parliaments. If Parliaments are dissolved, Ministers will automatically go out. I cannot understand the logic of Members wanting to perpetuate themselves and saying only the Ministers.....

Shri L. Krishnaswami Bharathi (Madras : General) : Sir, it is a bad reflection on the Members of the House to say that they are apprehensive of elections, It is a reflection which it is not necessary to make.

The Honourable Shri K. Santhanam : I am not speaking about any particular person, I am speaking about human nature as such. I am not speaking of Members of this House but of all the Provincial Assemblies. I think we are, here as the guardians of the people of India and we should care more for their interests than for anything else. I am speaking from the point of view of principle. If you give power to a body, you cannot say that they will not exercise it. The whole Constitution is full of checks and balances. We want to limit the

power of future Parliaments by the Supreme Court. We have put in the Fundamental Rights to restrict it. But here we are giving powers to these provisional Assemblies and Parliament to perpetuate themselves almost indefinitely. Therefore, we must take some measures. Either put it in the Constitution or pass a resolution or take some other measures to fix a final and definite limit for these provisional Assemblies so that the people of India will know that the new Assemblies under the adult franchise will come into operation within a reasonable time. I think it is essential to do so. I do not think any individual should take it as a personal reflection; we want it for the future of the country and for the future of the Constitution because if the coming into force of the real Constitution is unduly delayed it may become out of date and we do not know whether there will be constitutional chaos. I want to prevent any such long interregnum or chaos taking place.

Therefore I am anxious that the Constitution which we have framed should come into full existence within six months or one year at most from the commencement of the Constitution on January 26. We must give a sort of assurance to the people of India that by January 26, 1951 or some such date the new Constitution will come into force. I think this is a matter in which every Member of this House is as much interested as myself. Therefore I hope no one will take my remarks as a personal reflection on any particular people or set of people. I would like to ask Mr. Bharathi whether it is not his duty to give the assurance which I am speaking of to the people of India. I hope he will join with me in giving that assurance.

Shri L. Krishnaswami Bharathi : Sir, may I draw the Honourable Member's attention to the fact that in this very House I pleaded that the elections should be held as early as possible?

Prof. Shibban Lal Saksena : Mr. President, I am very glad that my honourable Friend Mr. Santhanam has drawn the attention of the House to this aspect of the question. I do feel that he is perfectly correct in saying that the Constitution should say after what time the new Assemblies shall come into power. It is really correct to say that unless we provide this thing, we may perpetuate ourselves for ever although I am sure this House will not do it. We have already passed a resolution that in 1950 we shall have elections. Still, that is only a sort of an advice. This Constitution should lay down a time limit. My honourable Friend has suggested one year. Well, it all depends on how soon our present Government and the new Ministry which will be appointed will be able to conduct the elections and complete the Parliament. Whatever time is fixed, let there be an upper limit, one year, one and a half years or two years at the most. Within these two years, the new Parliament and the new legislatures must be elected. If we do not want to put this in the Constitution, let there be a resolution which should say that by that date, the new Parliament shall be elected. It would be unfair for the country and for the people as a whole that they should not know how long it will take.....

Dr. P. S. Deshmukh : On a point of order, Sir, in the absence of an amendment to this effect, I do not think these remarks can have any consequence.

Prof. Shibban Lal Saksena : My honourable Friend Mr. Santhanam suggested.....

Mr. President : The honourable Member is entitled to speak generally on the amendments moved. He has drawn that conclusion from the amendment and he is commenting on it.

Prof. Shibban Lal Saksena : This article 312 does not say when the life of these legislatures will be over. If you read the article carefully, it says that they shall automatically become the new legislatures. You have not put in

[Prof. Shibban Lal Saksena]

any time limit. They may continue for ever. Therefore, I say that Mr. Santhanam has raised a correct point. We must fix some time limit either in the Constitution—I think that would be better—or by some resolution so that at the end of the upper limit, these legislatures should not have any power left and a new legislature should come into existence. This is necessary not only from the constitutional point of view, but for the people of the country, because they may say that there will be delay and so on and so forth. There must be something put down here that would work as a sort of an inducement to see that new legislatures are brought into existence as quickly as possible. I cannot say what limit should be put—one year or one and a half years or two years. Recently, new Unions of States have been formed and a period of one year may not be sufficient for making arrangements in them. At any rate, the period should not exceed two years. At the end of two years, we must have a new Parliament and new legislatures in every State.

Shri B. Das (Orissa: General): Sir, I was very glad to hear my honourable Friend Mr. Santhanam voice the view that he is very anxious that the Constitution should come into effect to a certain scheduled date. My experience of my own Congress Cabinet is that they never keep to schedule. They have avoided shouldering responsibilities which are not the responsibilities of this House or the Parliament, but the responsibilities of the Cabinet. If we fix a time limit, say January 1951, it is the responsible duty of the Cabinet Ministers and the Ministers in the Provinces to delimit the constituencies and to prepare the voters' rolls. Can my honourable Friend Mr. Santhanam or any member of the Cabinet here present tell me how far they have advanced to carry out the wishes of this august House? We the representatives of the people are to voice the conscious democratic opinion of the country. We have appointed these Cabinet Ministers and their Colleagues as the Executive to give effect to those constitutional aspects of the Draft Constitution. If they fail in their duties, it is no use asking this House to fix a certain date over dissolution. May I enquire, suppose the date is fixed as 1st January 1951, and suppose the Executive, be that our own Congress Cabinet here or the provincial Ministries, fail to discharge this responsibility, will my honourable Friend Mr. Santhanam or those other Ministers present here tell us how the Constitution will provide either in the Constitution or in that resolution that this House will have to pass eventually, that a certain enforcement must be enjoined on the Cabinet here and in the provinces? I can take the horse to the water; but I cannot make the horse drink. People can appoint the Ministers. But the Ministers must solve the problems for which they are appointed as the Executive head of the Government of India.

The past traditions of the Government of India and the provincial ministers do not show that they are in any hurry to do everything for democracy. I make no reflection on any Minister; but I say that their collective action to render social justice, to remove poverty, since August 15, 1947, does not show that they are very keen to give effect to those democratic principles which have been incorporated in this Constitution. It is for the members of the Government and the Cabinet and their colleagues the other Ministers to deliberate and to bring forward a resolution which this House will consider with great sympathy. In spite of my wish to dissolve this House on the 26th of January 1950, I have no confidence, I have no hope even that the present Cabinet and their colleagues and other Ministers have thought over the problems to give full effect to this Constitution. The burden is on the shoulders of the Cabinet Ministers inside and outside and not on the Members of this House. But I am ready to support him that the House must consider a resolution and pass it that the Constitution should not be delayed. The responsibility for that, the

implementation of that, is on the Cabinet Ministers here and in the provinces and not on ourselves, not on this democratic House.

Shri H.V. Kamath: Mr. President, with the speeding up of our railway trains in recent months, even of the notorious Grand Trunk Express, it was in the fitness of things that our Minister of State for Railways, Mr. Santhanam should come before the House and plead for the speeding up of the Constitution. It is inevitable, it is very desirable that he should do it, for all the Members of this House. But, even he cannot afford to forget that the Grand Trunk Express does not keep to schedule even today. Last Sunday when I arrived here, the Grand Trunk Express was five and a half or six hours beyond schedule.

An Honourable Member: The Punjab Mail also!

Shri H. V. Kamath : I do not know about the Punjab Mail; the Grand Trunk Express was six hours beyond schedule. I arrived at twenty minutes past two instead of at 8.10 or 8.15.

The Honourable Shri K. Santhanam: The honourable Member may remember that there were floods.

Shri H.V. Kamath: I am coming to that.

Shri R.K. Sidhwa: With new engines, the trains are late.

Mr. President : I hope Members will not go in to the question of floods, delays in railway timings, arrival of trains. We had better confine ourselves to the Constitution.

Shri H.V. Kamath: I was just coming to that. The point raised by my honourable Friend Mr. Santhanam....

Mr. President : He did not raise the question of railway timings and floods.

Shri H.V. Kamath: I hope, Sir, you have appreciated the illustration I have given. The point I sought to make out was that we make up our minds and pass very fine resolutions, but there are hurdles created somewhere by something or other. I may remind the House that there are higher powers that rule the destinies of men and things. I would like Mr. Santhanam as a Minister of State to bear in mind that something may happen somewhere in this wide world upsetting all our plans. Suppose a war breaks out tomorrow in Europe—God forbid—then under the Constitution everything will be suspended under Chapter 11 and there would be no elections. Suppose, again, there is disturbance or insurrection in the country, an emergency is proclaimed and the President will take everything into his own hands.

I yield to none in my desire for early elections. Let them be held even in February next if need be, but they should be on adult franchise, and not under the old scheme of the Cabinet Mission. We passed a resolution last year asking for the preparation of electoral rolls as early as possible so as to facilitate elections in 1950. Have we implemented that in letter and spirit? How far have the Governments of the provinces and States gone ahead with this task of preparing electoral rolls? Mr. Santhanam must throw some light on this before he comes to the Assembly to plead for a deadline for elections under the Constitution. I am not opposed to dissolution of this Assembly; but what is the point in holding elections under the old scheme of 1946? If at all there should be elections, certainly we should have them under the new Constitution.

Mr. President : Mr. Santhanam did not think of the old scheme.

Shri H. V. Kamath : He mentioned the dissolution of the Assembly, and holding fresh elections.

Mr. President : Not under the Cabinet Mission plan.

Shri H. V. Kamath : I am sorry, Sir. Then the only course open is to have them under this Constitution with which I am in agreement. But bearing in mind the difficulties that may arise, is he sure in his own mind that we will be able to hold elections if we fix a schedule? We can pass a resolution as a directive to the various Governments to get in trim for the elections. Mr. Santhanam referred to the French Constitution. I have not read the latest French Constitution but I can point out to him that the Bonn Constitution as well as the Italian Constitution—the latest—do not fix a date for elections to be held under the new Constitution.

Regarding Mr. Tyagi's point, I am inclined to be in agreement with him, that there is no need for incorporation of clause (3) in this article. It seems that by force of habit we have incorporated this. May I point out to Dr. Ambedkar and the Drafting Committee that Chapter 3 of Part VI refers to State legislatures? That is the main heading, and then officers of the State legislature is; only a part of it—a sub-chapter. When we are providing for the continuance of the entire legislature of the State as an interim measure, is there any sense for specially mentioning the Speaker, and if the Drafting Committee and Dr. Ambedkar think it necessary, then why not mention the Deputy Speaker and the Deputy President of the Upper House also? They have been referred to in this chapter 3 of Part VI. Otherwise, delete it altogether because they are comprised in the legislature as a whole, and clauses (1) and (2) of this article 312 refer to the State legislature as a whole, and therefore everything else, including conduct of business etc. is comprised in this chapter 3. If this clause is deemed necessary, why not make provision for the privileges and immunities of members, saying that they will continue as before the commencement of the Constitution or something similar to that? I suggest therefore that clause (3) may be deleted.

Mr. President : Mr. Bharathi, I think you had better cut short the discussion of this matter which really does not arise out of the article moved.

Shri L. Krishnaswami Bharathi : Very well, Sir. I had absolutely no intention of speaking and I shall very briefly bring to your notice and the notice of this honourable House what we have done. Mr. Santhanam's point of view is that, unless we put down a definite date, there might be an impression created that this House is likely to perpetuate itself and delay elections with all its disastrous consequences. I want to bring to your notice and to the notice of this House that this House has already passed a Resolution moved by the Honourable Pandit Nehru on the 8th January 1949 when the Vice-President was occupying the chair. I was only anxious to draw the attention to the aspect of the matter. The resolution reads thus:—

“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.”

That is the resolution we passed on the 8th January 1949. Speaking on this Resolution Dr. Ambedkar has clearly indicated the scope of this resolution. I shall only read a portion.

“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 1950, etc.”

Therefore we have already passed a resolution, and unless Mr. Santhanam thinks this a mere pious resolution without any intention to give effect to it and I think he will not give that interpretation—this Assembly means and it is the intention to

hold elections as early as possible. I am only anxious that there should not be an impression created outside that this Assembly would like somehow to perpetuate itself. Far be it from our minds, to delay the elections a minute longer than is absolutely necessary by circumstances of the case, but there is this practical difficulty. Suppose we put in a date, what does it mean? If due to some unforeseen circumstances, we are unable to hold the elections, what are we to do? Therefore, what I say is, let it not be understood that the omission to mention a date means that this House wants to perpetuate itself. We have already passed a resolution and we propose to stand by it and it is the intention of the House to hold the elections as early as possible. Sir, this is the only point that I want to bring to the notice of the House.

Mr. President : I do not think it is necessary to continue the discussion on this point. If I had notice that this point would be raised I would have got a report up-to-date with regard to the steps that have already been taken and if possible, I shall place before the House, if not today, the next day, a report showing what steps have already been taken and what progress has already been made with regard to the preparation of rolls and other matters in connection with the elections. As was pointed out, it was passed by this Assembly that steps should be taken in this direction, and it is the Constituent Assembly Secretariat which has been in correspondence with the Provincial Governments with regard to 'the steps which have been taken. And steps have been taken. I only desire Honourable Members to remember this that we have decided to have adult franchise, and if we just consider what that implies, the tremendousness of the task will be apparent. With our present population, and with the information at our disposal based on the enrolment of voters, it seems our electoral roll will comprise anything between 170 and 180 million names. The mere act of printing this is such a big and tremendous job that the governments are being hard put to it, to find the presses which will undertake this big job. I was myself calculating one day the thickness of the volume of the electoral roll for all the provinces and I found that it will come to nearly three-fourth of a furlong. If we bear that in mind, you will appreciate that if there is delay, the delay will not be intentional on the part of either the Provincial or the Central Government, but because of the bigness of the job itself.

I think that should set at rest all speculations on that point. We are trying our best, and as at present advised, the information which has come to us from the Provinces leads us to hope that the elections will be held some time in the winter of 1950-51, that is to say, any time between November 1950 and February or March of 1951. That is what we are expecting. Of course, if unforeseen difficulties arise, we do not know what may have to be done at that time.

Shri R. K. Sidhwa : Sir, after what you have said, I do not want to make any speech. But I only want to say that the speech that Mr. Santhanam has made might create a very bad impression in the minds of the public outside this Hall. Therefore, I am very glad, Sir that you have clarified the position, I need only add that Mr. Santhanam, a responsible Minister should not have spoken in such an irresponsible manner. After this Constituent Assembly is over, who is to fix the election date? It is the cabinet. Let them fix it after six months, but it is for them to decide, and it is not proper for him to say that the House wants to perpetuate itself. I am very glad, Sir, that you have indicated the great interest you have taken to see that the elections do take place as early as possible. I was obliged to make this statement lest Mr. Santhanam's remarks should create any wrong impression. I am very sorry that he has made the statement that he has made.

Mr. President : I do not think he said so. I do not think that the remark is justified. I do not want any further discussion. I do not think it is necessary. If any Member wants to speak about the article he can do so.

Sri M. Ananthasayanam Ayyangar (Madras : General) : Sir, elaborate provisions have been made for the retention of the existing House or Houses of Legislatures, and there are provisions for the appointment of Ministers. But there is no provision for the dissolution of any House even in this transitory period, in case that becomes necessary. Sir, such a dissolution may become necessary, and from that point of view, Mr. Santhanam's suggestion becomes very necessary. Does anybody wish to prolong the life of this House? No. But having regard to the absence of provisions for the

Shri R. K. Sidhwa : Sir, you said there should not be any more discussion on this point. Is this relevant?

Sri M. Ananthasayanam Ayyangar : I am only referring to the absence of provisions for dissolution of existing Houses of Legislatures. I am glad Mr. Sidhwa has taken up the position of the President to say whether this is relevant or not relevant. I was only saying something about the absence of provisions for dissolution of Houses. If the House sits for three or four years, there should be some provision for its dissolution, if it becomes necessary. I therefore request honourable Members to consider this seriously. Are we to give a charter to the Legislatures, to the existing Houses to continue for over and for ever, even if it is not in the interest of the country? Many matters may happen which may require the Members going to the electorate. For instance, it may be a question whether prohibition should be introduced in some provinces where it is not introduced. Or it may be some other important matter on which we may have to go to the electorate. Then, what is to happen? That is a lacuna which must be filled up. I would urge even now that it is not too late to have a provision regarding dissolution of existing Houses.

Then as regards the privileges which my Friend referred to, I believe the existing Houses will continue to be governed and regulated by the existing provisions regarding the scope, subject matter etc. These will be governed by the Lists that are attached to this Constitution. In all other respects, such as the subject matter, the scope of jurisdiction and other activities, the rules and regulations under which they work, they will be governed by the Constitution. Therefore, whatever privileges are conferred upon the Members of Parliament in the earlier sections that we have passed, they will apply to the Members of Parliament. There is only this exception that there will not be election during the transitory period. All the other provisions regarding procedure in Parliament, and the powers of the legislatures in the Provinces will be regulated by the powers etc. which have been conferred by the Act.

Pandit Lakshmi Kanta Maitra (West Bengal : General) : Sir, I would like to get this clear. What dissolution is the honourable Member referring to?

Sri M. Ananthasayanam Ayyangar : The dissolution of House or Houses of Legislature. It may happen with regard to a particular matter. There may be serious difference of opinion, and they may have to go back to the country. The dissolution may be by the Prime Minister or the Governor may dissolve the legislature so as to have a better verdict from the people regarding an important matter.

Pandit Lakshmi Kanta Maitra : He means to say that in the interim period a chance should be given to the electorate to give its verdict on a particular matter?

Sri M. Ananthasayanam Ayyangar : Yes.

Pandit Lakshmi Kanta Maitra : Even during the interim period? And have a general election also ? Absurd.

Sri M. Ananthasayanam Ayyangar : It all depends how long the interim period lasts. If it is a short one, there may not be any need for the dissolution. But what if it is otherwise? We know every sitting Member will be anxious to continue and every other person who has not had a chance may like to have the House dissolved. I am not casting any aspersions on any particular Member. I only say that in the circumstances I have mentioned, there must be some provision whereby, if necessary, an opportunity can be had of changing the Assembly and going to the electorate.

The Honourable Dr. B. R. Ambedkar : Sir, after what has fallen from you, I do not think it is necessary for me to pursue the matter any further. So far as the merits of the amended article are concerned, I do not think anything has been said which calls for a reply.

Shri H. V. Kamath : What about the clause concerning the Speaker?

The Honourable Dr. B. R. Ambedkar : That was there in the original draft.

Mr. President : I will now put article 312 to vote. The question is:

“That the proposed article 312 stand part of the Constitution.”

The motion was adopted.

Article 312 was added to the Constitution.

Articles 312A to 312E, 312 G and 312 H

The Honourable Dr. B. R. Ambedkar : Sir, I move:

That after article 312, the following new articles be inserted :—

312A. Any person holding office as Governor in any Province immediately before the commencement of this Constitution shall after such commencement be the provisional Governor of the corresponding State for the time being specified in Part I of the First Schedule until a new Governor has been appointed in accordance with the provisions of Chapter II of Part VI of this Constitution and has entered upon his office.

Provisions as to
provisional Governor
of Provinces

312B. Such persons as the provisional Governor of a State may appoint in this behalf shall become members of the Council of Ministers of the provisional Governor under this Constitution, and until appointments are so made, all persons holding office as Ministers for the corresponding State immediately before the commencement of this Constitution shall become and shall continue to hold office as members of the Council of Ministers of the provisional Governor of the State under this Constitution.

Council of Ministers
of Provisional
Governors.

312 C. Until the House or Houses of the Legislature of a State for the time being specified in Part III of the First Schedule has or have been duly constituted and summoned to meet for the first session under the provisions of this Constitution, the body or authority functioning immediately before such commencement as the Legislature of the corresponding Indian State shall exercise the powers and perform the duties conferred by the provisions of this Constitution on the House or Houses of the Legislature of the State so specified.

Provisions as to
provisional Legislatures
in State in Part III of the
First Schedule.

312 D. Such persons as the Rajpramukh of a State for the time being specified in Part III of the First Schedule may appoint in this behalf shall become members of the Council of Ministers of such Rajpramukh under this Constitution and until appointments are so made all persons holding office as Ministers immediately before the commencement of this constitution in the corresponding Indian State shall become and shall continue to hold office as members of the Council of Ministers of such Rajpramukh under this Constitution.

Council of Ministers for
States in Part III of the
First Schedule.

[The Honourable Dr. B. R. Ambedkar]

For article 312E I propose amendment No. 21:

“That in amendment No. 16 above, for the proposed new article 312E, the following be substituted :—

‘312E. For the purposes of elections held under any of the provisions of this Constitution during a period of three years from the commencement of this Constitution the population of India or any part thereof may, notwithstanding anything, contained in this Constitution, be determined in such manner as the president may by order direct.’ ”

“312G. A Bill which immediately before the commencement of this Constitution was pending in the Legislature of the Dominion of India or in the legislature of any Province or Indian State may, subject to any provision to the contrary, which may be included in rules made by Parliament or the Legislature of the corresponding State under this Constitution, be continued in Parliament or the Legislature of the corresponding State, as the case may be, as, if the proceedings taken with reference to the Bill in the Dominion Legislature or in the Legislature of the Province or Indian State had been taken in Parliament or the Legislature of the corresponding State.

312H. The provisions of this Constitution relating to the Consolidated Fund of India or of any State and appropriation of moneys out of such fund shall not apply in relation to moneys received or raised or expenditure incurred by the Government of India or the Government of any State between the commencement of this Constitution and the thirty first day of March, 1950, both days inclusive, and any expenditure incurred during that period shall be deemed to be duly authorised if the expenditure was specified in a schedule of authorised expenditure authenticated in accordance with the provisions of the Government of India Act, 1935, by the Governor-General of the Dominion of India or the Governor of the corresponding Province or is authorised by the Rajpramukh of the State in accordance with such rules as were applicable to the authorisation of expenditure from the revenues of the corresponding Indian State immediately before such commencement.”

I do not think there is anything necessary to say by way of explanation of these articles.

There are two amendments Nos. 18 and 19 on the Notice Paper proposing to omit the word ‘provisional’ in articles 312A and 312B. I propose to accept these amendments in consonance with what we have already done.

Dr. P. S. Deshmukh : Mr. President, I move:

“That in amendment No’ 16 above, in the proposed new article 312A, the word ‘provisional’, wherever it occurs, be deleted.”

“That in amendment No. 16 above, in the proposed new article 312B, the word ‘provisional’, wherever it occurs, be deleted.”

I am glad that the amendments are acceptable to Dr. Ambedkar. My reason for these are that it would be derogatory to the dignity of the President or the Governor to be described as ‘provisional’. I commend the amendments for the acceptance of the House.

Shri H. V. Kamath : I move:

“That in amendment No. 16 above, in the proposed new article 312E, for the words ‘by Order directs’ the words ‘may, with the approval of parliament, direct’ be substituted.”

If my amendment is accepted by the House this new article 312E will read as follows:

“For the purposes of elections held under any of the provisions of this Constitution during a period of three years from the commencement of this Constitution the population

of India or of any part thereof may, notwithstanding anything contained in this Constitution, be determined in such manner as the President may, with the approval of Parliament, direct.”

This 312E is somewhat different from the draft of the new article as it reached us a day earlier. Anyhow my amendment would apply to this draft article as well. The issue that this proposed new article raises is that of the elections to be held under this Constitution.

I believe the House will agree with me when I say that elections are a matter with which Parliament is and will be very intimately concerned, and will be interested in. I see no reason why Parliament should be left out of the picture so far as determination of the population of India or of any part thereof is concerned. We have just adopted an article providing for various matters upon the inauguration of the Constitution and the Proclamation of the Republic, and there will be an interim Parliament also functioning with effect from that date. To my mind there is no inherent difficulty about consultation by the President with this Parliament. I have not sought to provide that these matters must be provided for by Parliament. I only want that whatever measures, whatever action, whatever steps, are taken by the President in this connection must be laid before Parliament. My amendment comes to this, that whatever measures are taken by the President in this regard must meet with the approval of Parliament.

I do not wish to dilate or expatiate upon the desirability or the soundness of the amendment which I have moved. I am sure it will commend itself to the House, considering the matter with which this article deals. In the determination of the population of India or any part thereof I do not want that the President should act on his own or on the advice of his Council of Ministers. It is a very vital matter concerning elections to legislatures and this House will do well to provide that any measures taken by the President in this regard should be laid before Parliament for its consideration, and approval or otherwise. Otherwise we will be striking at the very roots of the Constitution that we are passing, where normally the supremacy of Parliament has been recognised. We are providing for a sovereign democratic Republic, and I do not see why in this matter of elections Parliament should not be taken into confidence by the President. I cannot see any inherent difficulty in or objection of the President laying his measures before Parliament. The straightforward course will be for the President to lay his decrees in this connection before Parliament, seek its approval and obtain it.

Mr. President : There is no other amendment to this article; but there is an amendment of which notice has been given by Mr. Sidhva but that relates really to article 311 which deals with the Central Legislature. When that article comes up, that amendment will become relevant, but it is not relevant to this article which deals with the provincial legislatures. We shall hold it over until article 311 comes before the House for consideration. Does anyone else wish to say anything on this ?

Prof. Shibban Lal Saksena : Mr. President, Sir, this is an omnibus article which provides for the needs of the transitional period. I only want to comment on article 312E and here I support Mr. Kamath in so far as he wants that the population may be determined by the President but it must be approved by Parliament. In fact, the original article 312E was more comprehensive. The revised article 312E says—

“For the purposes of elections held under any of the provisions of this Constitution during a period of three years from the commencement of this Constitution the population of India or of any part thereof may, notwithstanding anything in this Constitution, be determined in such manner as the President may by order direct.”

I think this too wide a power to give to the President. Here is this House which, it is proposed, will become the new Parliament. This House is passing a Constitution and we are providing here for the transitory period. If anything arises

[Prof. Shibban Lal Saksena]

during transitory period for which there is no provision in the Constitution, then this Constituent Assembly will still be there as the new Parliament. If there is any difficulty, it can be referred to Parliament and Parliament can make the necessary law for the purpose.

I therefore do not think that we should burden our Constitution with powers given to the President for things not provided for in the Constitution. It is quite possible that during the transitory period matters may arise for which there is no provision in the Constitution, but which we should not permit the President to be the authority to decide. This very Parliament will be there. If any lacuna is seen, the President can refer it to this House and this House can frame a law providing for that contingency. In fact, the members of the Parliament will be elected on the basis of population. For a population of not less than five lakhs and not more than seven and a half lakhs there will be one representative in this House. So, determination of the population becomes very important and this should not be left to the sweet will of the President, which means actually the advice of the Ministers. To leave such an important power in the hands of the President will, I think, be unfair to this House and to the country. The amendment moved by Mr. Kamath is very fair, and if there is any action taken by the President on such an occasion, it should be laid before Parliament.

Then, Sir, I do not see any provision here regarding constituencies. I would like Dr. Ambedkar to inform us whether there is any provision in the Constitution for the delimitation of constituencies. Or, does he want to leave it entirely to the Election Commission? Formerly, under article 312B the constituencies were also to be delimited by the President. I am glad that he has omitted the provision. I do want to know whether any provision is made in the Constitution for the report of the Delimitation Commission to be submitted to the Parliament for approval. It should in the normal course be submitted to the Parliament which will come into existence in the coming January.

The Honourable Dr. B. R. Ambedkar : I cannot accept this amendment. My Friends Mr. Kamath and Prof. Saksena have read a great deal into this article 312E As a matter of fact the article is of very limited importance and the question that is dealt with in this article is the determination of the population of any particular area. My friends very well know that according to the article which we have already passed the population for purposes of election is to be taken as determined by the last census. It is also accepted that having regard to the partition of India the census figures for 1941 cannot be taken as accurate, and consequently the delimitation of constituencies and the fixation of seats cannot be based upon the truncated provinces whose population figures have been considerably disturbed. Therefore, it is as well to have some one in authority to determine what the population should be taken to be and whether the population is to be taken as enumerated in the census or by a fresh enumeration or, as I said, by merely determining the population on the basis of the voting strength. These are the matters that are left to the President and I do not see what the approval of Parliament is going to do in a matter of this sort. It is a purely administrative matter necessitated by the special circumstances of the case and I think it is much more desirable to leave the matter to the President, if we want really that the elections should be expedited. I am therefore unable to accept the amendment moved by my Friend Mr. Kamath.

Shri H. V. Kamath : Has Dr. Ambedkar any objection to the principle of my amendment?

The Honourable Dr. B. R. Ambedkar : I do not accept it. The import of this article is very limited. It is the determination of the population, not

delimitation of constituencies. The delimitation of constituencies will take place according to the provisions of the Constitution.

Mr. President : The question is:

“That in the proposed new article 312A, the word ‘provisional’, wherever it occurs be deleted”.

The amendment was adopted.

Mr. President : The question is:

“That in the proposed new article 312B, the word ‘provisional’, wherever it occurs, be ,deleted.”

The amendment was adopted.

Mr. President : The question is:

“That in the proposed new article 312E, for the words ‘by Order directs’ the words ‘may, with the approval of Parliament, direct’ be substituted.”

The amendment was negatived.

Mr. President : The question is:

“That proposed article 312A, as amended, stand part of the Constitution.”

The motion was adopted.

Article 312A, as amended, was added to the Constitution.

Mr. President : The question is:

“That proposed article 312B, as amended, stand part of the Constitution.”

The motion was adopted.

Article 312B, as amended, was added to the Constitution.

Mr. President : The question is:

“That proposed articles 312C. and 312D. stand part of the Constitution.”

The motion was adopted.

Articles 312C. and 312D. were added to the Constitution.

Mr. President : The question is:

“That proposed article 312E, as amended, stand part of the Constitution.”

The motion was adopted.

Article No. 312E, as amended, was added to the Constitution.

Mr. President : The question is :

“That proposed articles 312G and 312H stand part of the Constitution.”

The motion was adopted.

Articles 312G and 312H were added to the Constitution.

Articles 313

Honourable Dr. B. R. Ambedkar : Sir, I move:

“That for article 313, the following be substituted :—

313. (1) The President may, for the purpose of removing any difficulties, particularly in relation to the transition from the provisions of the Government of India Act, 1935, to the provisions of this Constitution, by order, direct that this Constitution shall, during such period as may be specified in the Order, have effect subject to such adaptations, whether by way of modification, addition or omission, as he may deem to be necessary or expedient:

Power of the
President to remove
difficulties.

[The Honourable Dr. B. R. Ambedkar]

Provided that no such order shall be made after the first meeting of Parliament duly constituted under Chapter II of Part V of this Constitution.

(2) Every order made under clause (1) of this article shall be laid before each House of Parliament.”

This is a reproduction of the provision contained in the Government of India Act which is necessary for the transition period.

Dr. P. S. Deshmukh : Sir, there are four amendments standing in my name, which I beg to move:

“That in amendment No. 23 of List I (First Week), in the proposed article 313, in clause (1), the bracket and figure '(1)' and clause (2) be deleted.”

“That in amendment No. 23 of List I (First Week), in clause (1) of the proposed article 313, after the words ‘The President may’ the words ‘on being moved by Parliament or any Provincial Legislature in that behalf’ be inserted.”

“That in amendment No. 23 of List I (First Week), in clause (1) of the proposed article 313, for the words ‘whether by way of modification, addition or omission’ the words ‘by way of modification,’ be substituted.”

“That in amendment No. 23 of List I (First Week), in clause (2) of the proposed article 313, the words ‘for their approval’ be added at the end.”

The very nature of my amendments makes quite clear the intention in regard to these amendments of mine. The powers under this provision as it has been proposed in article 313 are certainly similar to those which were conferred on His Majesty by section 310 of the Government of India Act. But the powers so conferred by that Act were considerably limited and there was in any case a limiting period of six months provided for in section 310. There is no such provision here and it is also not at all ascertainable as to when the first meeting of the new Parliament may be held unless the proviso “Provided that no such order shall be made after the first meeting of Parliament duly constituted under Chapter II of Part V of this Constitution” means a meeting of this House continued after the 26th January, the date on which the new Constitution will come into effect. In that case I would not like to press my amendment.

But if these powers which are going to be conferred on the President are to continue till the new Parliament comes into being and starts functioning, as appears obviously the case, then I consider that the powers are extraordinarily wide and the mere limitation of these orders being placed before the Parliament would not be quite enough. For even apart from the powers that we have conferred on the President so far as the withdrawing of any of the provisions of the Constitution is concerned, this is a provision which is contemplated to be made specifically for the removal of difficulties. But if these provisions are meant to solve the difficulties, why should it not be possible to say that the proposal should emanate either from Parliament, or from the Provincial Legislatures? If that safeguard is there, then there will be no difficulty in allowing the President, not only by way of adaptations to modify, but to add or even omit provisions from this Constitution. So in one of my amendments I have suggested that these modifications or additions or omissions should proceed only on the recommendation of Parliament or on the recommendation or suggestion of any Provincial Legislature.

It is obvious that the amendments I have proposed are in the alternative. There are two sets of amendments. If it is possible to provide that the orders in this connection of the President shall be limited to such matters as would be suggested by Parliament or the Provincial Legislatures, then there would be no

need of the other sets of amendments. But if that is not acceptable then it would be necessary to provide that not only should the orders be laid before Parliament but they should also seek the approval of Parliament.

If it is possible for Dr. Ambedkar to throw any light on the observations I have made and to clarify the matter, I will see my way not to press these amendments. But I personally think that although it is based on section 310, there is no limitation so far as the time is concerned, and if we leave the provision as it is I think we are conferring very large and extensive powers of even omission and addition to the whole Constitution on the simple excuse that could be easily put forward that a certain provision leads to difficulties or certain other provision is necessary for the removal of a difficulty. There is no definition of the word “difficulty” and any difficulty which the President in his individual discretion considers a difficulty would be sufficient excuse for him to take advantage of this article and it will not be challengeable in any court of law. It is therefore capable of being misinterpreted to the detriment of the Constitution and the country. In view of that, I would suggest that this may be considered a little more carefully if possible or some explanation given so that I might decide whether to press my amendments or not.

Shri H. V. Kamath : Mr. President, there is an amendment in my name—No. 3320 in the printed list of amendments, volume II—but I do not propose to move it. I would, however, like to say this much, that I am afraid that the Drafting Committee has not quite accurately described this transition through which we are passing. The sankrant which has overtaken us is somewhat different. The transition referred to by the Drafting Committee in this proposed article refers to the period between the Government of India Act, 1935 and this Constitution. There has been a slip somewhere—the Drafting Committee to my mind has tripped, and has not accurately described the present stage of this transition. We are being governed not under the Government of India Act, 1935, but that Act of 1935 as adapted by the Indian Independence Act of 1947. So my friend Dr. Ambedkar who has got such an eye to constitutional forms and propriety, and the constitutional pandit that he is, would do well, to describe this transition more accurately than he has done. It would be more correct to say “the transition from the provisions of the Government of India Act, 1935 as adapted under the Indian Independence Act of 1947 to the provisions of this Constitution”. It is plain as a pike-staff that the original Act of 1935 has ceased to exist and we are governed by the adapted Act. It would be better for him and the Drafting Committee to amend this—it can be amended—and I hope we will find it in a different form at the Third Reading. The House, I am sure, will have no objection to this amendment. I have not given notice of it, but as Dr. Ambedkar moved it today it struck me that even he—it is said, “Homer nods” has failed to notice the inaccuracy or the impropriety of the description of the transition in which we are living.

Prof. Shibban Lal Saksena : Mr. President, Sir, this article is intended really to provide for any contingency which may arise during the transition from the Government of India Act, 1935, to the new Constitution. It is assumed that there might be some lacuna in the Constitution which we have drafted in regard to which the President should be empowered to make provisions during the transitional period. But I feel that the powers given to him in this article are very wide. It says “this Constitution shall.... have effect subject to such adaptations, whether by way of modification, addition or omission, as he may deem to be necessary or expedient”. Therefore the President is empowered to alter the Constitution, to omit sections of the Constitution or to modify them on the plea that it is necessary for the transition from the Government of India Act to the New Constitution. Of course, that means that if the Constituent Assembly had foreseen that contingency it would have made provision for it. I suggest that

[Prof. Shibban Lal Saksena]

if the contingency should arise, which has not been foreseen and for which Dr. Ambedkar wants to empower the President with powers to modify, add or omit parts of the Constitution, this very House as Parliament should be able to do it. Why should not this very Parliament be then called upon to provide for the lacuna which may have been found.

I therefore think that this power is wholly unnecessary. What should be done is this: During this transitional period the Parliament should be empowered to provide for and fill any lacuna which may be discovered. To arm the President with power to omit something or to add something in the Constitution is something which is unparalleled in any other Constitution. It is most preposterous that the President should have this power even when this very Constituent Assembly will be there as the Parliament of the nation. This power for the President is wholly undemocratic and should not be allowed. The Parliament should be called upon to provide for and to fill any lacuna which may be found.

If Dr. Ambedkar insists on having it, then I would suggest that we accept the amendment of Dr. Deshmukh, amendment No. 33, so that if the President wants to make any modifications by way of additions or omissions then this Parliament should be called upon to approve them or disapprove them or modify them within a month or so. It must not be left entirely to the President to have such wide powers and the House should not arm him with these powers.

The Honourable Dr. B. R. Ambedkar : Sir, there seems to be considerable misapprehension as to the necessity of the provisions contained in article 313. My Friend Dr. Deshmukh who has moved his amendment very kindly said that if I gave a satisfactory explanation as to the provisions contained in article 313 he would not press his amendment. With regard to article 313 I think certain facts will be admitted. The first fact which I expect will be admitted on all hands is this. During the transition period there are bound to arise certain difficulties which it is not possible for the Drafting Committee, or for the matter of that any Member of this House, to fully foresee right now and to make any provision. Therefore, it is necessary that there should reside somewhere some power to resolve these unforeseen difficulties.

The question therefore is to what extent and up to what period these powers should be lodged in that particular authority. My Friend, Dr. Deshmukh, said that under section 310 of the Government of India Act, the power was to last for six months. I think he is under a mistake. The power was to last for six months after Part III had come into operation. Ours is a very limited provision. The power to resolve difficulties by constitutional provisions vested by article 313 would automatically come to an end on the day on which the new Parliament under the new provisions comes into existence. We therefore do not propose under this article to allow the President to exercise the powers given to him under 313 a day longer than the proper authority entitled to make amendments comes into being. That is one feature of this article 313.

Admitting the fact that difficulties will arise and that they must be resolved and the power must vest with somebody, the question that really arises for consideration is this: whether this power should vest in the President or it should vest in the provisional Parliament. There cannot be any other alternative. The reason why the Drafting Committee has felt that it would be desirable to adopt the provisions contained in article 313 and vest the power in the President is because the duration of the transitional Parliament is so small and it might be busy with so many other matters requiring Parliamentary legislation that it would not be possible for the Parliament sitting during the transitional period to grapple with a matter which must be immediately solved.

Let me give one or two illustrations of the difficulties that are likely to arise. By our Constitution we have made considerable changes in the powers of taxation of the States and the Centre. On the 26th January next, when the Constitution

comes into existence, the powers of taxation of the Indian States enjoyed by them under the existing Government of India Act would automatically come to an end. It would create a crisis and therefore this matter should be regularised. If we were to get it regularised by the provisional Parliament, I think my friend would realise that it would take such a long time that the crisis would continue. Therefore, rather than adopt the ordinary Parliamentary procedure of having a Bill read three times, sent to Select Committee, having a consideration motion, circulation and so on, I think it is desirable, for the purpose of saving the Constitution from difficulties, to lodge this power with the President so that he may expeditiously act. Therefore, as I said, on the merits the provision is necessary. Comparing it with the provisions contained in section 310, ours is a much limited proposal, and I submit that having regard to these circumstances there cannot be any serious or fundamental objection to the House accepting article 313.

With regard to the point made by my Friend Mr. Kamath, I think he will realise that there is no error on the part of the Drafting Committee in referring to the Government of India Act, 1935, without making a distinction between the original Statute and the Statute as adapted, because he will see that the Statute as adapted itself provides that its short title shall be, "Government of India Act, 1935", and I have no doubt that it is in that sense that it will be understood when this article comes to be interpreted.

Dr. P. S. Deshmukh : May I ask a question? If the Parliament is asked to approve the order passed by the President would there be any harm?

The Honourable Dr. B. R. Ambedkar : But 'approval' means what? It may nullify the action taken by the President, and the object of this provision is to provide an effective remedy. That way it cannot come into force quickly while what we want is that the matter should come into force at once.

Mr. President : I shall put the amendments now. Amendment No. 37 moved by Dr. Ambedkar.

The question is:

"That in Amendment No. 23 of List I (First Week), in clause (2) of the proposed article 313, the words 'each House of' be deleted."

The amendment was adopted.

Dr. P. S. Deshmukh : Sir, I beg leave to withdraw my Amendments Nos. 30, 31 and 32 but not 33.

Amendments Nos. 30, 31 and 32 were, by leave of the Assembly, withdrawn.

Mr. President : The question is:

"That in amendment No. 23 of List I (First week), in clause (2) of the proposed article 313, the words 'for its approval' be added at the end."

The amendment was negatived.

Mr. President I shall now put article 313 as proposed as amended by Dr. Ambedkar's amendment to vote.

The question is:

"That proposed article 313, as amended, stand part of the Constitution."

The motion was adopted.

Article 313, as amended, was added to the Constitution.

Mr. President : I think we have no other item on the Order Paper. We have to adjourn now.

The Honourable Shri Satyanarayan Sinha (Bihar : General) : We may meet at ten o'clock on Monday.

Mr. President : We adjourn till Ten o'clock on Monday.

The Assembly then adjourned till Ten of the Clock on Monday the 10th October, 1949.

CONSTITUENT ASSEMBLY OF INDIA

Monday, the 10th October 1949

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 Member took the pledge and signed the Register:—

Shri Hira Vallabh Tripathi (United Provinces : General).

DRAFT CONSTITUTION—(Contd.)

New Article 283-A

Mr. President : We shall now go on with the consideration of the articles, 283 A—Mr. Munshi.

Shri K. M. Munshi (Bombay : General) : Mr. President, Sir I beg to move the new article 283 A which is on List I of the Second Week. The article which I submit to the House runs as follows:—

“283. A. Except as otherwise expressly provided by this Constitution, every person who, being a member of a service specified in clause (2) of article 282-B of this Constitution or a service which was known before the commencement of this Constitution as an All India service continues on and after such commencement to serve under the Government of India or of a State shall be entitled to receive from the Government of India and the Government of the State, which he is from time to time serving, the same conditions of service as respects remuneration, leave and pension, and the same rights as respects disciplinary matters or rights as similar thereto as changed circumstances may permit as that person was entitled to immediately before such commencement.”

Provision for protection of existing officers of certain services.

Sir, as honourable Members will see, the original draft article which was circulated had these words:

“been a member of the service specified in clause (2) of article 282 B of this Constitution or a Service which was known before the commencement of this Constitution as an All India Service.”

This included a much wider category of civil servants and it has now been restricted only to members of the Civil Service of the Crown in India who continue on and after the commencement of this Constitution to serve under the Government of India or of a State. Therefore, there is no material change except that the guarantee that was given by the Independence Act to certain members of the Civil Service has been continued and the wider implications of the clause as originally submitted has now been restricted.

In this connection, I wish to draw the attention of the House that in view of certain guarantees that were given before 15th August, 1947 by the leaders of the Nation who negotiated with the British Government some assurances found a place in Section 10 of the Independence Act. Section 10(2) of the Independence Act runs as follows:—

I am only reading the material part:

“Every person who having been appointed by the Secretary of State, or Secretary of State in Council, to a civil service of the Crown in India continues on and after the appointed day to serve under the Government of either of the now Dominions of any Province or part thereof;”

[Shri K. M. Munshi]

(b) is not material for the purpose of this article—

“shall be entitled to receive from the Governments of the Dominions and the Provinces or parts which he is from time to time serving or, as the case may be.”

The same words are adopted in article 283A. Practically this is a reproduction of clause 2 (a) of Section 10 of the Independence Act and follows the assurances that have been given again and again by our national leaders before 15th August and by our Government from time to time. I therefore submit that this article should be accepted.

Mr. President : There are several amendments to this article. 124-Mr. Kamath.

Shri H. V. Kamath : (C.P. & Berar : General) Mr. President, I am missing Dr. Ambedkar today and I hope if he is unwell.....

Mr. President : He is engaged elsewhere.

Shri H. V. Kamath : I move amendments* 124 up to 131 inclusive.

Mr. President : You need not read them. You may read the article as it would emerge after incorporating your amendments.

Shri H. V. Kamath : If the amendments that I propose were accepted by the House, this article 283A would read as follows:—

“Except as otherwise provided by this Constitution, every person who, having been appointed by the Secretary of State or the Secretary of State in Council to the Civil of the Crown in India continues on and after the commencement of this Constitution to serve under the Government of India or of a State, shall be entitled to receive from the Government of India or the Government of the State as the case may be, conditions of service as regards salary, leave and pension and rules of conduct and discipline, as similar as the changed circumstances may permit, to what that person was entitled to immediately before such commencement.”

*“124. That ‘in amendment No. 1 of List I (Second Week), in the proposed new article 283A, the word ‘expressly’ be deleted.

125. That in amendment No. 1 of List I (Second Week), in the proposed new article 283A, in line 9, for the word ‘and’ the word ‘or’ be substituted.

126. That in amendment No. 1 of List I (Second Week), in the proposed new article 283A, for the words ‘which he is from time to time serving’ the words ‘as the case may be’ be substituted.

127. That in amendment No. 1 of List I (Second week), in the proposed new article 283A, for the words ‘the same conditions’ the word ‘conditions’ be substituted.

128. That in amendment No. 1 of List I (Second Week), in the proposed new article 283A, for the word ‘remuneration’ the word ‘salary’ be substituted.

129. That in amendment No. 1 of List I (Second Week), in the proposed new article 283A, for the words ‘and the same rights’ the words ‘and rules’ be substituted.

130. That in amendment No. 1 of List I (Second Week), in the proposed new article 283A, for the words ‘as respects disciplinary matters of rights’ the words ‘or conduct and discipline’ be substituted.

131. That in amendment No. 1 of List I (Second Week), in the proposed new article 283A, for the words ‘as similar thereto as changed circumstances may permit as that person was entitled to immediately before such commencement’ the words ‘as similar, as changed circumstances may permit to what that person was entitled to immediately before such commencement’ be substituted.”

Sir, when I read this article 283 A my first reaction was that it had been drafted in a hurry. The construction of the article is, to my mind execrable, and I will not be far wrong if I say that the last portion of it seems to have been messed up very badly. I am talking about the construction of it, and I feel that if it is left as it is, the Drafting Committee and ultimately the Assembly which passes it will be held up to ridicule. Perhaps partly because this is a foreign language, it is so, and this is an argument in itself to promote our *Rashtra Bhasha* as soon as possible so as to enable us to express ourselves much better in our own language.

Sir, the first amendment is a merely verbal one and I shall not bother to speak about it very much. I would leave it to the good sense of the Drafting Committee.

The second amendment—No. 125—deals with the antecedent of the words “Government of India and of a State.” Naturally, to my mind, the sequence of that also must be “the Government of India or of a State” on the lines of their antecedent. Why put in the word “and”. The correct word should be “or”.

Amendment No. 126 seeks to substitute the phrase “as the case may be” for the words “which he is from time to time serving.” It is not necessary to say “which he is from time to time serving”. It may be that he is serving the Government of India or the Government of a State. But if you use the phrase, “as the case may be” it brings out the meaning equally well, and from the point of view of constitutional terminology or parlance also, I think it is a far better and a far happier expression.

Then I come to another verbal amendment which seeks to substitute the word “salary” for the word “remuneration.” I feel that so far as the civil servants and public servants are concerned, “salary” is a much more dignified term than “remuneration.” In all the other articles, I believe, we have used the word “salary” wherever this meaning was implied. We have been speaking of salary of judges, salary of the President and so also, I believe, the salary of the Ministers and the salary and allowances of the M.L.As. Here also, therefore, I think the more appropriate word would be “salary” and not “remuneration.”

Now I come to that part of it which I said was messed up very badly. If my Friend Mr. Munshi and his colleagues on the Drafting Committee care to follow me in what I say, I am sure they will realise the mistake that has been committed, if their minds be open and not closed to any change. Here the language used is very very inaccurate and unhappy. The House will follow what I say when I refer to the part of the article beginning with “the same conditions “ up to the end of it. But before I come to that I would like to say a word about the word “receive”. I could not find an appropriate substitute for that, but I feel it is a very inaccurate word in this context. Receive what? Receive conditions of service? Receiving rights as regards disciplinary matters or rights? That is a very inapt expression. I have never seen the word ‘receive’, used in this context, though unfortunately I could not myself find another word for it. I would, however request the Drafting Committee to look into the matter again and when the third reading comes, I hope the word “receive” would be substituted by some other and better word.

If the House will carefully peruse the last part of the sentence, it will see the bad construction of it. It speaks of same conditions and similar conditions or similar rights as respects disciplinary matters and all that. Now if it is the same, it is identical, but not similar. You cannot have both same and similar together. So one or the other has to be omitted. I have therefore suggested

[Shri H. V. Kamath]

the word 'similar', so that the conditions may be as similar as possible, to those that existed, as circumstances permit. My amendments Nos. 131 and 128 refer to this part of the article. I have sought to say that what is intended is something similar to what existed before the commencement of the Constitution and not the same. I am also sure that the Drafting Committee will agree with me that that is what they imply. Therefore, it will be more correct to say conditions and rules as similar to those existing, as the changed circumstances may permit.

Amendment No. 130 refers to the portion of the article which speaks of rights as respects disciplinary matters or rights. What exactly is meant, God only knows. The word "rights" is repeated. "Rights as regard disciplinary matters or rights". But there are no rights regarding disciplinary matters. There are rules of discipline, there is a code of conduct and there are regulations regarding discipline. But what is meant by "rights as respects disciplinary matters or rights"? I have seen the service from the inside for some years, and I do not know what such rights are. There is only a code of conduct, there are no rights about discipline. When I read it once, twice, thrice, I wondered whether really the eminent draftsmen of the Drafting Committee had drafted it or somebody else had done it and the Committee had not looked into it closely.

One word more. Mr. Munshi has told us that Civil servants were given a guarantee by Government as soon as the Independence Act was passed on 15th August, 1947. So, that matter is not at all in dispute. But the whole article has been drafted so incorrectly that I would humbly request the Drafting committee to reconsider the whole matter and bring it up afresh, in correct and accurate language and with a happier construction, when it comes up for the Third Reading.

Mr. President : No. 132, Mr. Naziruddin Ahmad.

Shri Brajeshwar Prasad (Bihar: General): What about amendment No. 14?

Mr. President : Amendment 14 refers to the previous draft.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, some of my amendments are of substance and some others are merely formal. I shall move only sub-numbers (iii), (iv) and (vii). Sir, I move:

"That in amendment No. 1 of List I (Second Week), in the proposed new article 283 A—
for the word 'continues' the words 'shall continue' be substituted;
for the words 'shall be entitled' the words 'and shall be entitled' be substituted; and
for the words 'he is from time to time serving' the words 'he shall from time to time be serving' be substituted."

My object in suggesting these amendments is that we are providing for the future of certain services. It seems to me that the provisions should be in the future tense, but the present tense has been used here all along. Omitting a number of conditions, the bare sentence, article 283 A is that "every persons who having been appointed by the Secretary of State or the Secretary of State in Council to a civil service of the Crown in India continues on or after the commencement of this Constitution..... Instead of the word "continues" I propose that the words should be "shall continue". My idea is that we are providing for the future of these services, and therefore the verb should be in the future tense. The other amendments are of a similar nature and do not require any further argument.

On a careful consideration of article 283 A, it seems that the article, as has already been pointed out by Mr. Kamath, has been very hastily drafted. One glaring inconsistency from a drafting point of view has been pointed out by Mr. Kamath, namely the word "receive". The word seems to be totally inappropriate. I suggest that the Drafting Committee should reconsider the drafting in the light of some of the amendments and comments suggested and made in the House.

A further difficulty in the way of Members dealing with these articles is that these articles were circulated only yesterday at about nine or ten P.M. and then there was no time to consider the articles and to suggest amendments and to submit amendments to the office by five o'clock yesterday. That is the reason why some of the amendments have not been well-considered, and the word "receive" escaped my attention on account of hurry. I suggest that the Drafting Committee should reconsider the drafting of this article. There are a number of other small improvements which I have suggested and which I have not moved but I think they deserve the consideration of the Drafting Committee.

Mr. President : There is an amendment, notice of which has been given by Mr. Sidhva this morning.

Shri R. K. Sidhwa (C.P. & Berar: General): I am not moving it, Sir.

Mr. President : Now the article and the amendments are open to discussion. There are one or two amendments proposing deletion. I do not take them as amendments.

Shri Mahavir Tyagi (United Provinces: General): Sir, on principle I do not agree that any such commitments should be made by this Constituent Assembly, the liability of which goes to the coming Parliaments. In the case of these few civil service people, only some guarantees are being transferred over, I have no objection to that, but they should be transferred from Parliament to Parliament. If these guarantees are now confirmed by this Constituent Assembly they will go as a perpetual liability to the coming Parliaments. At this stage I do not think that any opposition to this move will have much backing; still I want to ask a few questions before I vote for these guarantees.

As it happens, in India today persons of the Civil Service having only seven, eight or nine years' service are acting in the Secretariat as Secretaries and Joint Secretaries and getting much higher pay, a pay which, if India were not, independent, they would get after serving for eighteen or nineteen years. So, speedy elevation has been given to many Civil Service people. I want to know as to what will happen to those Secretaries who are more than the minimum guaranteed number of "eight". As far as I know, only eight posts of Secretaries had been guaranteed. These posts cannot be reduced from eight to seven or six, but at present there are twenty-one Secretaries. Now, the original liability was to pay Rs. 4,000 per month to each of these eight Secretaries. Now, we are paying the same rate of pay to twenty-one Secretaries. I want to know whether after passing this article we will be entitled or not to reduce the number of Secretaries from twenty-one to eight. Now, if this is also a commitment that the coming Governments will have to pay twenty-one Secretaries and a number of Joint Secretaries at the present scale of pay a number, which is much bigger than the number originally guaranteed—is this not an extra liability on the future Parliament? Or will the future Parliament be free to reduce the number of the Secretaries?

[Shri Mahavir Tyagi]

Today, it seems to me that the bulk of benefit of independence has gone to the Service people, and the other classes of people have gone down. The Service people are getting much bigger pay than they would otherwise get it if India were not independent. In understand that in Pakistan they have made a rule that every Civil Servant will either get the salary of the higher grade achieved by him after independence, or only thirty per cent. more than the pay he was getting before independence was achieved whichever is less.

There is no civil servant in Pakistan whose pay has been increased more than by thirty percent. of what he was getting before the 15th of August 1947. But here, even very junior officers have got accelerated promotions on senior scales of pay on account of the opting of Muslim officers to Pakistan and the retirement of the European members of the Civil Services.

I would appreciate if Mr. Munshi would clarify as to whether, after the passing of this provision, it will be incumbent upon the future Parliament of India to maintain the same number of Secretaries on high salaries, or whether they will be free to reduce the number of Secretaries in the Secretariat, and pay them lower pay. Almost all the vested interests like the Princes and the Zamindars have gone. It is only the vested interests of the few Civil Servants that we are perpetuating by guaranteeing their interests. Will they be a perpetual liability on the future Parliaments?

Shri T. T. Krishnamachari (Madras: General): If it would help my honourable Friend to cut his argument short.....

Shri Mahavir Tyagi : I have had my-say. If the honourable Member wants to enlighten me on this issue he may kindly explain to me as to what the position really is.

Shri Rohini Kumar Chaudhuri (Assam: General): Mr. President, Sir, I welcome this new article which has been placed before the House by Mr. Munshi. I welcome it because it enables us to maintain that standard of conduct which any civilised Government ought to maintain with regard to Civil Services which co-work under them.

In considering this article before the House, we have to bear one, fact in mind-that although a revolution has been going on in our country for a long time, the immediate reason for the transfer of power was not a revolution, a revolution which would justify our upsetting everything that had existed before. We should remember that the power that the previous Government had exercised was peacefully transferred to us, and, therefore, the obligations which they had entered into should be respected, as far as possible. In this particular case not only that obligation should influence our conduct, but there is a consideration, and that is that a guarantee was given by our leaders- leaders who had taken the most prominent part in achieving for us the liberty of the country. No matter whatever may be the criticism against us, we must respect and honour the guarantees given by our leaders.

While I fully support this article, I would like to make a humble appeal to the members of the services. I would ask them to remember whether it would not be proper for them as a return of the gesture which we have shown by accepting this article, to renounce a percentage of the remuneration which has been given to them and which they will get by reason of the acceptance of this article. I remember, Sir, in 1931 when there was talk of retrenchment all over the country, the members of the I.C.S. whose salary could not be retrenched by the India Government, voluntarily submitted themselves to a cut in their salaries and allowances. While the European members of the

Indian Civil Service could show such a gesture in the interests of this country, I am sure the Indian members of the Indian Civil Services, would not be found wanting in their sense of patriotism to their motherland. I believe, Sir, that there will be very little objection on their part in doing so, because they should remember that while the leaders of the Congress had given up their earning, had given up their vacation had given up their position in life and had gone into jail, the Civil Servants had remained quietly at their own desk, earning their own bread and doing their ordinary work. We did not grudge their doing so. If at that time all the members of the Civil Service had also resigned, there might have been great difficulty for us to carry on the work in the period of transition. I do not grudge their having done so at that time. But now as they are enjoying with us the liberty for which they have not made any sacrifice-of course, I am not talking of men like Subhash Chandra Bose and Mr. Kamath-who had resigned the coveted position out of a great sense of patriotism-now submit to a voluntary reduction of their remuneration.

Sir, in this connection we have to remember the position of some of the ministers *vis-a-vis* the status of their Secretaries. While the Ministers were drawing a salary ranging from Rs. 750 to 1,000 their I.C.S. Secretaries were drawing salaries ranging from Rs. 2,000 to 3,000. While the Ministers were trying to push their old motor-cars on the road in order to get a start-because they could not afford to have new motor cars-these Secretaries would pass by the Ministers in their new beautiful motor cars and just wave their hands to the Minister and say "Cheerio". He does not care to stop because his fashionable wife is sitting by his side. That sort of thing should not be repeated now. There should not be such a difference of status between the Minister and his Secretary. The only way of putting a stop to that would be to provide all Ministers with State cars. I had also seen that the Secretaries would not like to visit Ministers in their houses, because the Ministers of those days would not be able to furnish their houses in the manner in which I.C.S. Secretaries could do.

Therefore, while accepting this article, I would make an appeal to the services, once more, to give up their excessive income if they can do so. Let them come to the level of ordinary gentlemen and give up whatever they can. Even if they cannot give up whatever they can, do not let them have any luxury but try to invest their income in objects of national welfare. Give some charity for educational institutions or something of that kind or help in the uplift of the masses. That is what I would appeal. I support this article.

Shri R. K. Sidhwa: Mr. President, Sir, while I believe entirely in the desirability of keeping the services of the State contented, the limit of that contentment should not be crossed over by the services. In this respect, it has been done so. With due respect to the members of that great service who are really serving the country, I would have preferred that this article should not have found a place in our Constitution. If we have made an agreement, we certainly are bound to carry it out and that would be a matter between the leaders and the services and it will be Known that it is faithfully carried out. Why should it find a place in the Constitution?

Then again, this article is not happily worded. Probably the Drafting Committee has not paid proper attention to the wording. For instance, take this word "remuneration". Even in the case of the Prime Minister, the Ministers, the Speaker, the Deputy Speaker, the word "salary" is mentioned. But why is the word "remuneration" mentioned here? It is a little better word. it has better pomp than "salary". That is why it has been put in. The services people want something extraordinary for themselves.

[Shri R. K. Sidhwa]

Then they want the same rights as respects discipline. Now, we know what discipline means. It means conduct within the four walls of the rules. The words as put in here will create complications for the future governments. This Government knows what are these conditions, but if you put it into the Constitution, the future government would be embarrassed considerably if the services are permitted to do things as they like and at the same time demand the same disciplinary rights along with continuity of their terms. I know that we are bound to give the services the things for which we have made commitments. I do not dispute that. But I feel that they should not find a place in the Constitution. The services should be content with trusting our leaders that they will faithfully carry out the commitments.

We are proud of the services. But is it desirable that they should dictate to us the terms on which they would serve ? It is very unfair. If you study the language of this article, you will see that they want to dictate the terms under which they want to serve us in the future. I had sent in an amendment. I did not move it, because if I did not want to embarrass the services. My amendment states that after five years of this Constitution, Parliament shall have the right to make any law relating to the conduct of the services. But I have not moved it, because I do not wish it to be understood by the services that we want to embarrass them, that we do not want to fulfill the promises that have been made. We are a nation trained to fulfil a commitment if it has been made. That is what we have been taught by our leader and we do want to do that. At the same time, I do desire that our services should not dictate to us. With these words, I hope the Drafting Committee will reconsider this matter.

Dr. P. S. Deshmukh (C. P. & Berar: General): Mr. President. Sir, I am afraid I cannot resist the temptation of submitting to this House that it is not very proper to continue to have a provision of this nature in our Constitution. It was well and good for those Constitutions which were framed by the British people or the British Parliament to have a clause like this. We are now framing a Constitution of Free India. Indians are framing their own Constitution for themselves. Under these circumstances, I do not think any guarantees of this nature were at all necessary. If there is a guarantee, if we have given our word, that word as it stands should be quite sufficient not only for the I.C.S. and other covenanted services but for the whole nation, for every one of us. If we do not value that word, then there is not much to be gained either by the nation or by the Civil Services by relying on an article which is embodied in the Constitution. Even from the point of view of appearances, it does not look nice that you should go out of your way to single out a certain service which is really the remnant of the days of our slavery, of our dependence, and that, to be incorporated almost bodily, in the same fashion as it existed in the Act of 1935. I do not think this was at all necessary. I do not think that the services are really, as described by Mr. Sidhwa, insistent upon this. I for one do not think they are insistent. I do not think the Civil Service as a whole have been consulted recently after the attainment of freedom or that they have passed any resolution or made any demand that their contractual relationship should remain intact. At least that is not my information. If they are given a chance. I have no doubt that they will probably be the first to say that they do not need any constitutional safeguard for their rights.

Secondly, if we really want to have a provision like this, then why should we have added these words "same rights as respects disciplinary matters... as similar thereto as changed circumstances many permit." In my view this negatives the guarantee altogether. What is the meaning of

“changed circumstances”? If the change in circumstances is going to enable any Government to change the contractual relationship that exists or the promises that have been made, then what is the guarantee worth? Any circumstances can at any time be utilised to go back upon the promises? So I think we have created somewhat anomalous position. On the one hand we are solicitous of giving satisfaction to the Civil Service and they are a very intelligent class of people and on the other we are taking away all that we have given. I am sure they will know what we really mean by the use of the words “as changed circumstances may permit.” Actually, we are trying to out-do the Britishers in following and imitating the 1935 Act. The I.C.S. was originally created by the British out of British personnel and they, at every stage when the political rights of Indian advanced, wanted more and more guarantees for those people who had come out of their country and were serving here. I am sure no Secretary of State at any time was interested to the same extent in the Indian personnel. He was interested in the British personnel and these guarantees were intended for the British personnel. I am certain no Indian is so unpatriotic as to demand a constitutional guarantee nor so ignorant as to how our government may behave in such a matter that he will have much faith in a guarantee of this kind, especially when we take away the whole effect of the article by putting in the words “as changed circumstances may permit”. Actually, what is the history of this Civil Service and the sanctity of contracts entered into with them? The history reveals that although the Civil Services were regarded as the steel frame and the contractual relationship between the Government of India and the Civil Service were always to be considered sacrosanct, there was at least one occasion when this sanctity of contract was completely violated.

In 1931 the same British Government itself had to come down and impose a cut of 10 per cent and this was done on the ground of a change in the circumstances. Some tried to give this the colour of a voluntary cut. Actually the sanctity of contract had to give way to the exigencies of the situation is early as 1931. So that, having regard to all this that has gone in the past, this contractual relationship is liable to be altered from time to time and I do not think therefore that it is wise or necessary to put in this article. If the guarantee is necessary, then whatever guarantee it is said we have already given are already there. They have not been taken away. Nobody has suggested that they should be withdrawn or abrogated and that I believe should be quite sufficient for the Civil Service.

Sir, there is also another reason and that is that the inclusion of this article especially with these words—“as changed circumstances may permit”—would really lead to a fresh grievance which does not exist. We are at the present moment passing through a financial crisis. It may be very necessary within about three months time hence to cut down the salaries of all people who are getting Rs. 1,500 or more. Actually we have set at nought our own solemn decision of the Pay Commission proposals. We accepted their recommendations not to pay any person a salary of more than Rs. 2,200 or so, and yet we have got the spectacle of having to pay 50 to 75 per cent. more than the maximum which we have accepted on the recommendations of the Pay Commission. So, in view of the present financial crisis and in view of the recommendations which we have accepted, it may be necessary for us within the next few months to come before Parliament and say that no one in India shall get more than such and such salary. We shall then have to have recourse to changed circumstances as the ground to justify our action. We will have to say that we cannot pay you anything more than Rs. 2,000 as the circumstances have now altered. What is the use giving a bombastic promise and then going back on it? It is no use. Anyone can see that the present circumstances of India are such that you cannot afford to pay salaries at this rate to

[Dr. P. S. Deshmukh]

the civil servants at which we are paying today. When we are in the throes of these difficulties what is the use of contaminating our Constitution with a promise which we cannot fulfil? So I submit that this article should be reconsidered and as far as possible held back. If the civil servants insist on the guarantee, by all means give it to them. But it is not necessary to include it in the Constitution for that purpose.

Sri M. Ananthasayanam Ayyangar (Madras: General): I also thought that I should be vehement in this matter as my Friend, Dr. Deshmukh, and others. I do agree that though a contented Civil Service is the very backbone of the administration in any country, this particular service for whom we are making provision here was the heaven-born service of the previous regime and will continue to be the heaven-born service for some time to come. We have not been able to give a guarantee for food and clothing to the ordinary masses of this country. We have not given a guarantee to the Under-dogs in the administration. The other day was passed certain articles whereby we have stated in this Constitution that all servants of the State will hold office only during the pleasure of the Government. This is an extraordinary guarantee that we are giving under this article. This guarantee means that they were the rulers under the old regime and that they will continue to be so in this regime. This guarantee asks us to forget that these persons who are still in the service—400 of them—committed excesses thinking that this was not their country.

This guarantee gives a guarantee to those persons who have played into the hands of others. My Friend, Mr. Kamath, and a few persons like him, who had the courage of their convictions, resigned in the cause of this country. All those people are honourable men, who at that time tried to muster courage and throw in their lot with the rest of the community in this country who was struggling hard for freedom. This is not to the credit of this service. They cared more for their money and the salaries they got. The European Government that ruled over us sometime ago could not rely upon the loyalty of any citizen in this country, because their loyalty and our loyalties were different. They belonged to a different country from ours and therefore that prejudiced their loyalty. It was the money that could attract loyalty of any citizen of this country to the King of England and therefore the salaries they gave and the scales they fixed knew no bounds. The Governor-General got Rs. 21,000 a month : a Governor got Rs. 10,000 a month: a Secretary got Rs.4,000 a month,—out of all proportion to our national income.

Our national income is not more than Rs. 100 per annum, whereas the national income of Great Britain is Rs. 1200 per annum. America is different. So far as salaries are concerned, they are on a much higher scale in this country than in any part of the world with respect to the Civil Service. So far as national income is concerned, ours is the lowest. These persons had to be purchased to serve by the previous British Government. The best of our intellects had to be drawn away and they were made to do whatever things the previous Government asked them to do, irrespective of the place in which they were born and irrespective of any patriotic instinct.

But I am asking honourable Members of this House to have regard for certain things which our people had to do. The persons, who are our leaders and the winners of freedom of this country say that they have given a guarantee collectively and individually to every one of these people that this was a condition of the transfer of power by the British Government into our hands. They wanted these conditions, particularly in the interests of the Europeans, not so much in the interests of the Indians. Possibly they wanted the interests of the

Indian bureaucrat to be safeguarded because they were loyal to them and they did not want to let them down when our own Government came in. I am not in favour of any provision in this Constitution. We could as well incorporate it in an Act of Parliament later on. But we must have the power to regulate. These are becoming super-sovereigns of this country.

I am aware of all that but it serves no useful purpose to enter into recriminations against ourselves when our own responsible leaders, who have spent their lives in the cause of winning freedom, have given this assurance. Let it not be said that we intervened in this matter, and went back on this assurance. If I support this clause it is in that spirit that I am supporting it. It is not in the spirit that all these people served our country for freedom in our time. I might say that those members who are still opposing, and quite legitimately too, may have this consolation—they may feel that they have legitimate objection to the wording of the clause as originally drafted. But the amendment made later is not so wide. I would request the attention of, the honourable Members to amendment No. 11 in List II of the Second Week. This has since been replaced by amendment No. 1 in List I and we have changed it out of recognition. This amendment follows section 247 of the Government of India Act as adapted by the Indian Independence Act. It was not the intention even of our leaders who gave the guarantee that the Civil Servants under the new Constitution should have greater privileges than they had during the previous regime. Therefore, not to give them any further privileges, this amendment has been moved. As I read it, this amendment says, that as in the previous regime the Governor-General had the power to frame rules and regulations so as to modify the conditions of their service from time to time, as circumstances may permit, the Government may have similar power now. Therefore, under the amended clause, I do not think as we suffer much. There may be extraordinary cases where we may have to interfere; there is ample provision for that here. We need not therefore be touchy about this. No doubt, we can do without this. But, in regard to the guarantees and assurances given not merely to these services, but to the other persons who have left us, I would earnestly appeal to all the Members of the House who have either tabled amendments or have spoken, not to press the amendments or to oppose this article.

Sir, I know that in the previous Government there were only eight Secretaries getting a salary of Rs. 4,000. Now, that number has been increased to 19 or 21. Honourable Member might remember that my honourable Friend Mr. N. Gopaldaswami Ayyangar was appointed to go into the reorganisation of the Secretariat. The matter is still pending with him. I am sure that though, under the guarantee that has been given, the salary of 4,000 Rupees ought not to be reduced, it is not incumbent upon us to a point every one of these people as Secretary or increase the number of secretaries from 8 to 21. It is still open to Mr. N. Gopaldaswami Ayyangar to suggest that in the interests of our country there ought to be only eight posts of Secretary, the others being made joint secretaries. That could be done. The people who insist upon the guarantees must themselves hesitate to ask for a guarantee. What does this guarantee mean?—that he must get Rs. 4,000 instead of Rs. 3,000. Is he working for bread or is he *hungering* otherwise? Till now, they have not shown a gesture, they have not shown that they are members of the Independent Sovereign Republic. They must also contribute their mite to its growth. We assume that they are still sticking to their pound of flesh. Even then it is open to us to reduce our number and we are not helpless. Mr. Gopaldaswami Ayyangar may consider this matter of the reduction of the number of secretaries posts from 21 or 19 to 8. This does not form part of the guarantee.

[Sri M. Ananthasayanam Ayyangar]

I have also got some other figures to show how much this Civil Service have got bloated. In the very bad times, the critical times that we are passing through, it is absolutely necessary that we must take the axe in our hand and Cut off some of the unnecessary officer that have been created. Under the previous regime, there were only five Joint Secretaries. Today, we have got 30 Joint Secretaries. Each Joint Secretary is entitled to a salary of Rs. 3,000. I am not speaking to you alone here, but I am speaking to those people who think that they must have the guarantees and benefit by it. After all, the good-will of the Government and the good-will of the people at large are the suggest guarantees any man can have. Without that good-will, if they merely insist upon their salaries only, they cannot long count upon that. Now, Sir, five Joint Secretaries have been increased to thirty.

There is a further point. Under the previous regime, the Europeans became Secretaries after 25 years of service, became Joint Secretaries after 20 years of service. Now, on account of the Europeans having gone away, persons who were in the lower rungs of the ladder, Deputy Secretaries, with ten and twelve years of service, have immediately become Joint Secretaries, because the place has fallen vacant. This is wrong in principle. We ought not to have appointed them Joint Secretaries straightaway. Even now, it is not too late. In spite of this guarantee we can tell them, "you must have put in so many years of service to be entitled to a salary of Rs. 3,000." Therefore, even if we pass this article, we are not helpless. The rigors of this article and the exactitude with which they may claim these moneys can be mitigated by suitable action taken in the Committee that has been appointed under Mr. Gopaldaswami Ayyangar's chairmanship.

I have one more word with regard to the services. We are making an exception in their favour. We are pampering them. But, even today, I am sorry to say that some of them have not changed their manners. They have not reconciled themselves to the new situation. They do not feel that they are part and parcel of this country. We hear so much about corruption. If there is corruption in any department, who is responsible for this? If the head of the department makes up his mind that he will root out corruption, cannot he do so? Can I or any of the Ministers who have no knowledge of the working of the administration, look into this? The Civil Service has got a claim to continue because it has got experience. The best talents have been drawn to this service. If today' in a department of which a Secretary drawing Rs. 4,000 is the head, there is corruption, he must be ashamed of himself. Am I to be going about asking for legislation that corruption should be put an end to? Who is corrupt? If in my household there is anything going wrong, the manager of the family must be held legitimately responsible for that. Like that, we do not grudge paying them a thousand Rupees more, for some time more, until this old band is exhausted. But, we in return expect that they should root out corruption. Otherwise, they are not entitled to this salary.

If we have put in the Constitution that we have to have a greater majority for amending the Constitution, in Parliament we need have only a simple majority. Under the rules and regulations we have to have a greater majority to change the Constitution. If in spite of all we have done, in spite of these assurances given in spite of their having their salaries at an enormous level which we cannot afford, there is corruption in any department, we know how to deal with them. Even if the Constitution were written on stone, hard stone, indelibly, we may alter it.

With these remarks, I appeal to the members and I also appeal to the Home and request that all the amendments may be withdrawn and this article may be passed though not without hesitation.

Shri Brajeshwar Prasad : Mr. President, Sir, I rise to support this article. I have not been able to follow the speech of my honourable Friend Mr. Ananthasayanam Ayyangar. He began by opposing this article; but, somehow, in the middle, he changed his course and began to support it. If I am opposed to any article, I will oppose it. If I am in favour of it, I will support it. I cannot sail in two boats.

Sir, there is one important reason in my mind why I am in favour of this article. The objection of some of the Members in this House that this article should not be incorporated in the Constitution gives rise to a suspicion in my mind. What is it at the back of their minds? Why is it that they are opposing this article? Do they want to honour their pledged word or not? A nation that sacrifices vital principles, that does not stand by its pledged word has no future in politics. We have given our pledged word to certain authorities that existed before the transference of power. I know fully well that if we do not abide by that word, nothing will happen to us. But, it will create a very bad impression. Therefore, I am in favour of this article. What we have pledged, we must stand by.

There is another reason why I am in favour of this article. If there would have been a guarantee that those who have pledged their word of honour to the British Government would remain in power so long as these services are in employment of the Government of India, I would not be in favour of this article. But we have made a democratic Constitution. We do not know whether we will remain in power tomorrow or not. There is another reason why I am in favour of incorporating this article in the Constitution itself. I have no faith in adult franchise. I do not know what kind of people will come in the future Parliament of India. In the heat of extremism or at the altar of some radical ideology, they may like to do away with the provision that we have made in the articles of the Constitution in favour of the services. Therefore I want that this thing should be made a part of the Constitution so that the amendment being not easy it will be difficult for them to undo what we are doing today.

A point was raised by Mr. Tyagi that this Constituent Assembly has made certain commitments and we should not bind the discretion of the future Parliament of India. I say that we have not made any commitments. Our leaders have made certain commitments. We stand by them and there is no question of binding the discretion of the Parliament because the future Parliament will not be a sovereign body. What we are doing today is in the nature of either expanding or restricting the power of Parliament and other different authorities in the Constitution. We are Sovereign and not the future Parliament. We can fetter the discretion of the Executive, Judiciary or Parliament. It is for this purpose that we are drawing up the Constitution.

Having these in my mind I am of opinion that this House should unanimously support this article so that the impression may go abroad that we stand by our words. This is only the first step—we do not know how many commitments we will have to make in the course of our international relations. One false step will lead to disaster. This step is not of a very important nature. We must learn how to practice the part of conducting ourselves in our relations with the foreign nations of the world. Therefore I take a very strong view of this question and attach the greatest importance to it. I am entirely in favour of this article.

Prof. Shibban Lal Saksena (United Provinces: General): Mr. President Sir, I had given my amendment No. 12 for deletion of this clause. The more I study it the more I am surprised that it should have found a place for being made a part of the Constitution. I can understand the future Parliament giving to the incumbents of the old Civil Service their old conditions of service

[Prof. Shibban Lal Saksena]

but that the Constitution should provide all guarantees which they enjoyed before is something which I cannot understand. Since the very beginning of its movements the Congress regarded the Civil Service as the Steel frame which enslaved us and criticised its conditions of service and the way in which it was pampered. It was regarded as the "heaven-born" service. I think now when we have come into our own we should not perpetuate what we have criticized so far and plainly say that there is no reason whatsoever for perpetuating the same conditions. I am told that some guarantees and assurances have been given to them. I do not know of any, but if there are I would suggest that Parliament should try to fulfil those conditions, but to bind the future Parliament and to say they shall not have the right to determine the conditions of service of its servants is something that will be derogatory to the sovereignty of Parliament.

Then I am not happy even with the work of the old Civil Servants. I know there are many amongst them who have done wonderful work, who as Sardar said once, are worth their weight in gold but the same cannot be said about all and my own complaint is that many of the ills of our country at present are due to the way in which they are still behaving. I do not think that the Civil Services should be treated differently from the Services whom we are creating now—the Administrative Services—otherwise it will result in bad blood. They must all be placed on an equal footing. In fact their record is not what one would like it to be. Mr. Ananthasayanam Ayyangar said how they have been guilty of stabbing the Nation during our freedom struggle. Therefore I think this article is an anachronism. It must not find a place in our Constitution and it should be removed.

Shri Kuladhar Chaliha (Assam : General :) Mr. President, I think the clause as it stands is rather difficult to support; but all the same our words have been pledged by distinguished leaders who have sacrificed their lives and leisure for the attainment of liberty and independence and their words must be respected. Then there is the other side that we are in a sort of Scylla and Charybdis. We want to support the clause because our distinguished leaders have pledged their words, but at the same time we have been speaking to our Constituents that when we attained liberty we will reduce the salaries of the different services to such an extent as to be consistent with their power to pay. As Mr. Brajeshwar Prasad said we are bound to support the words which have been given and we are bound to carry it out in a way that will give confidence to the Services. We feel for the Services because they have done something without which it would not be possible for the Government to carry on. They are one of the best services in the world and in the international situations they have given a good account of themselves. Yet, they for themselves have to consider that the condition of the country is such that it is necessary for them to sacrifice and to forego the conditions which have been given to them and also the terms under which they wanted to work. That heaven-born service has been pampered to such an extent by the Lee Commission and even then we cried hoarse. So if we have made any commitments we should honour them. As Mr. Ayyangar said, in the matter of food we have not been able to commit ourselves, and yet we are committing ourselves in this matter! Are we justified in doing it? Are we not bound to carry out the recommendations of the Economy Committee? Mr. Ayyangar said the other day, the Committee has recommended many things but we have not carried them out. Are we not bound by those guarantees which have been given to the people.

If we look into the whole circumstances, I think we ought to put a step to the increment of the salaries and we should rather try to follow in this matter the Pakistan ideal that they have given only 30 per cent, increment, which they

are entitled to. When a man becomes Joint Secretary he gets Rs. 3,000. Why should so much be given? If he is given 30 per cent. of his salary as addition, that should suffice. I do not know the exact words in which this guarantee or pledge was given, but I agree with Prof. Shibban Lal Saksena that it would be better not to tie down the hands of future generations by having a provision of this sort in the Constitution. I agree in a many matters that Mr. Ananthasayanam Ayyangar said, and I hope the Drafting Committee will consider this and see it if it could be modified in such a manner that future generations may not be tied down to it.

Babu Ramnarayan Singh (Bihar: General): *[Mr. President, sometimes such questions come up for consideration before the House, to which is very difficult to lend our support. I do not, however, intend to oppose the provision under consideration, since a guarantee has been given on behalf of the Nation to the members of Civil Services that their interests will be secure, and that the emoluments and privileges, they were so far entitled to, will remain unchanged. In fact every sort of assurance is being given to them. But I, for one, fail to understand the need for such guarantees at a the present juncture. Such assurances might have been needed at the time the British left this land, for them the civil servants were apprehensive about their future; they were afraid that they might be removed from the services. But no such apprehension exists now. The position is quite changed. Now they feel that the administration of the country cannot be run without them. There is no need, therefore, for any such guarantee at this time.

If, however, you want to give them guarantees I have no objection to that course being adopted. But we must know and I may add, every Member of the House should note it in his heart that the English regime was some time ago maintained by these very services; we were maltreated, oppressed and jailed by them. What I mean to convey is this, that the civil servants in our country were for the British rule here. But now they must know that we do not want any one's rule. We have achieved and established *Swarajya* (Self Government). Under *Swarajya*, Civil Servants must offer to the community the assurance that they would serve the country sincerely. On our part we are today giving them assurance that their future will be safeguarded, but no reciprocal assurances are coming from them to the effect that they would serve the country sincerely, honestly and incorruptibly. It is common knowledge now that not even an iota of change has come in their behaviour and that still they are what they had been.

In the past—I am speaking of the recent past of two years ago—they thought that they were masters of the country, they would remain masters and that they would continue to rule the people. This mentality is still lingering in them. Now that the Britishers have gone and popular government has been established here, the Civil Servants should change their behaviour and outlook, so that the people may feel that they are not out to oppress and rule them but to serve and protect them. But I am sorry to no such assurances are being given by them. I may submit that the observations made by Shri Ananthasayanam Ayyangar are quite correct. We will also have to consider as to what extent these people can serve and protect the people properly. The Civil Servants must know that they have not so far changed themselves and unless they do so, the guarantees that are sought to protect them in the Constitution will have no value. They have to give their sincere services to the nation and to achieve this end they have to follow the wishes of the people. They must take note that unless they change their age-long policy and their behaviour the guarantees provided for them in the Constitution will do them no good.

*[] Translation of Hindustani Speech.

[Babu Ramnarayan Singh]

I have nothing more to add but that I hope they would properly serve the country through their actions and behaviour and would always consider themselves as servants and never as masters. The idea of mastership must go now.

The Honourable Sardar Vallabhbhai J. Patel (Bombay: General): Sir, I am distressed that a senior Member like Mr. Ananthasayanam Ayyangar, a responsible Member of this House, who is the Deputy Speaker of the Assembly considers and expresses the opinion that the members of the service were carrying on a very difficult administration for the last two or three years, and at the same time harbours the feeling that they are enemies of our country. If that is so, it was his business and the business of those people who think on those lines to move first a resolution to dispense with them and run the administrations in vacuum—for there is no substitute of which he has thought of except the Congressmen or the Congress workers. I feel very said that the very instruments from whom we have to take work, we have been continuously quarrelling with. If that is so, we are not doing a service to the country. We are doing great disservice.

Now, he made a point that this guarantee should not have been given. What was he doing all this while? To those people who think on those lines, I say, this was not done in secret. No arrangement that was made with the British Government was done in secrecy, not done by an individual, but by the representatives, by all the duly recognised representatives of the Nation. When Mr. Henderson came here to settle this question of the Services, he had long discussions with me. He said that before the transference of power arrangements should be made to the satisfaction of the Parliament, that transference of power will take place only when guarantees are given to the members of the Secretary of States' services, each individual member of which has a Covenant with the Secretary of State for permanency and for certain other guarantees. More than fifty per cent. of the Secretary of State's services were Europeans. Britishers, and the rest were Indians. It was then suggested by him that there should be a treaty between England and India on this question. The suggestion was also made that they should be given due compensation if they have to leave the Services because they would not like to serve in the Indian administration, and that they should be given proportionate pension. Their status, their time-scale of pay, everything was to be settled before any question of transfer of power could be considered. Now, I had long negotiations and it was then a joint Government of the Muslims and the Non-Muslims. It was an all-India Government at that time and these negotiations resulted in certain conclusions which were placed before the Cabinet—it was a joint Cabinet at the time—and they were accepted by them. Then those conclusions were sent to Parliament and it was accepted there. Many of the Europeans who were in the services here have left now, but when the negotiations were going on, I told them to leave the case of Indians to us, that we shall deal with them as we deemed just, that they will trust us and we will trust them; and finally they agreed on certain conditions.

Now, I wish to point out that hardly anybody raised any objection to the arrangements that we were making at that time, but if they had suspected us, then there was plenty of scope at that time for them to come out and get better terms from outside agencies. Even now, if you are not willing to keep them, find out your substitute and many of them will go; the best of them will go. I wish to assure you that I have worked with them during this difficult period—I am speaking with a sense of heavy responsibility—and I must confess that in point of patriotism, in point of loyalty, in point of sincerity and in point of ability, you cannot have a substitute. They are as good as ourselves, and to

speak of them in disparaging terms in this House, in public, and to criticise them in this manner, is doing disservice to yourselves and to the country. This is my considered opinion.

Now, I will give you another series of facts which will convince you why guarantees were given. You had seen what was happening in the Punjab. In the five districts where havoc was being wrought, five British officers were in power and nothing could be done. I tried to get the District Magistrate of Gurgaon transferred. I could not succeed, and the British officer there arrested leading Congressmen when they were not at fault and put them in jail as hostages; he had the cheek to write on the application presented to him by the President of the Bar Association there to the effect that those were innocent and they should not be arrested and that they should be released immediately, that those people were being kept as hostages. This is the way he was doing this business. I was shocked and I went to Gurgaon. I saw him coming on the way and I asked him, "Have you arrested people as hostages?" He said, "No, who told you?" Fortunately, I had the document with me on which he had made that endorsement, and I showed him the endorsement. He asked, "How did you get this?" I said, "That is not the question. Is this your endorsement or not?" After that, I tried hard, I wrote to the then Governor of the Punjab, I pleaded with the Viceroy, but I found it difficult to remove him, and you know the havoc that was played in Gurgaon and these other districts. It was not in the Punjab alone; in other places also many such things were done. It was a time of touch and go and we could have lost India. Then we insisted that we had come to a stage when power must be transferred immediately, whatever happens, and then we decided to resign. It was at that time that Lord Mountbatten came.

I give you this inner history which nobody knows. I agreed to Partition as a last resort, when we had reached a stage when we could have lost all. We had five or six members in the Government, the Muslim League members. They had already established themselves as members who had come to partitions the country. At that stage we agreed to Partition; we decided that Partition could be agreed upon on the terms that the Punjab should be partitioned—they wanted the whole of it—that Bengal should be partitioned—they wanted Calcutta and the whole of it. Mr. Jinnah did not want a truncated Pakistan, but he had to swallow it. We said that these two provinces should be partitioned. I made a further condition that in two months' time power should be transferred and an Act should be passed by Parliament in that time, if it was guaranteed that the British Government would not interfere with the question of the Indian States. We said, "we will deal with that question; leave it to us; you take no sides. Let paramountcy be dead; you do not directly or indirectly try to revive it in any manner. You do not interfere. We shall settle our problem. The Princes are ours and we shall deal with them." On those conditions we agreed to Partition and on those conditions the Bill in Parliament was passed in two months, agreed to by all the three parties. Show me any instance in the history of the British Parliament when such a Bill was passed in two months. But this was done. It gave birth to this Parliament.

You now say, why did the leaders give these guarantees? In order to allow you to have an opportunity to attack the leaders on this very point. What else? You are responsible Members of the Parliament of a huge country. The Leader of this Parliament has been invited to America, the highest honour that could be done to him. He is treated with great respect. They are giving him all honours. You here say, "Why did the leaders give these assurances?" Think of the past. Why do you forget it? Have you read your own recent history ?

What is the use of talking that the service people were serving while we were in jail? I myself was arrested, I have been arrested several times. But that has never made any difference in my feeling towards people in the services.

[The Honourable Sardar Vallabhbhai J. Patel]

I do not defend the black sheep; they may be there. But are there not many honest people among them? But what is the language that you are using? I wish to place it on record in this House that if, during the last two or three years, most of the members of the services had not behaved patriotically and with loyalty, the Union would have collapsed. Ask Dr. John Matthai. He is working for the last fortnight with them on the economic question. You may ask his opinion. You will find what he says about the Services. You ask the Premiers of all provinces. Is there any Premier in any province who is prepared to work without the Services? He will immediately resign. He cannot manage. We had a small nucleus of a broken Service. With that bit of Service we have carried on a very difficult task. And if a responsible man speaks in this ton about these Services, he has to decide whether he has a substitute to propose, and let him take the responsibility. This is not a Congress platform. It is said that we promised Rs. 500 for the Ministers in the Karachi resolution. There is a long distance between Karachi and Delhi today. It is a different thing. You want Rs. 45 a day free of income-tax. What is the use of taking about Rs. 500 today? It is very wrong.

But I am prepared to admit that if the Indian Government is to be run today on the basis of Gandhian philosophy without army, I am prepared to change the whole thing. You are today spending 160 to 170 crores of rupees per year on the army. Are you going to change that set-up? Tomorrow the whole of India will be run over from one end to the other, if you have not got a strong army.

The Police which was broken has been brought to its proper level and is functioning fairly efficiently. The Heads of the Departments of the Police in every province are covered under this guarantee. Are you going to change that? Are you going to put your Congress volunteers as captains? What is it that you propose to do?

I am grieved to find that in a Parliament of this kind, Members, senior Members, speak in this strain. I would refer to you to the Indian Independence Act which gave birth to this Parliament and you find that the guarantees have been included there. When the Indian Independence Act was to be passed in Parliament the draft was sent here. The leaders of the nation were called for; the Cabinet was there, the Congress President was there, your President was there and your Leader today was there. Mahatma Gandhi was also present. Every section was scrutinised and the draft was approved. After that it was passed in Parliament. Now, these guarantees were circulated before that to the provinces. All provinces agreed. It was also agreed to incorporate these into the Constituent Assembly's New Constitution. That is one part of the guarantee. Have you read that history? Or, you do not care for the recent history after you began to make history. If you do that, then I tell you we have a dark future. Learn to stand upon your pledged word, and, also; as a man of experience I tell you, do not quarrel with the instruments with which you want to work. It is a bad workman who quarrels with his instruments. Take work from them. Every man wants some sort of encouragement. Nobody wants to put in work when every day he is criticised and ridiculed in public. Nobody will give you work like that. So, once and for all decide whether you want this service or not. If you have done with it and decide not to have this service at all, even in spite of my pledged word, I will take the Services with me and go. The nation has changed its mind.

The Services will earn their living. They are capable people. They were trained in a different setting. I know a senior Member of the Service with about twenty-five years service who went to England for higher education and training in the Civil Service, spent about fifty thousand rupees. He took a loan; he had not the money. But there is a glamour for the Civil Service on the part

of the Indian youth. He went there, he passed with distinction and came here. He served very ably, very loyally the then Government and later the present Government. His business is to serve the Government—that he is serving. He had a sense of patriotism. Often he came into difficulties with the then Government when he had to carry out orders against the Congress people, putting them in jail and otherwise. But he could not go beyond a certain limit. Now all his balance today at the end of twenty-five years' service is ten thousand rupees, and his wife and children, when he dies, will get some provident fund.

These were the circumstances in which many of the service people took their training, came here and served. Now we can say "Very well, they did it with open eyes, let them suffer." Then you make up your mind to prepare for a substitute. We have already a substitute. We have started a training school here in India; we have fixed the cadre, proposals for which have been approved by Provinces—you know all that.

If you want an efficient all-India service, I advise you to allow the services to open their mouth freely. If you are a Premier it would be your duty to allow your Secretary, or Chief Secretary, or other services working under you, to express their opinion without fear or favour. But I see a tendency today that in several provinces the services are set upon and told. "No, you are servicemen, you must carry out our orders." The Union will go—you will not have a united India, if you have not a good all-India service which has the independence to speak out its mind, which has a sense of security that you will stand by your word and that after all there is the Parliament, of which we can be proud, where their rights and privileges are secure. If you do not adopt this course, then do not follow the present Constitution. Substitute something else. Put in a Congress Constitution or some other Constitution or put in R.S.S. Constitution—whatever you like—but not this Constitution. This Constitution is meant to be worked by a ring of Service which will keep the country intact. There are many impediments in this Constitution which will hamper us, but in spite of that, we have in our collective wisdom come to a decision that we shall have this model wherein the ring of Service will be such that will keep the country under control.

As I told you, this agreement and these guarantees were circulated to the provinces and to individual members of the Service. Their agreement has been taken and signed by the provinces. They have agreed—both of them. Can you go behind these things? Have morals no place in the new Parliament? Is that how we are going to begin our new freedom? I have seen people who express their opinion about this Service as they used to talk in old fashion when 50 or 60 per cent. were British element who dominated the Service and our members of the Service had hardly any freedom to express their opinion and they were not independent. Today my Secretary can write a note opposed to my views. I have given that freedom, to all my Secretaries. I have told them, "If you do not give your honest opinion for fear that it will displease your Minister, please then you had better go. I will bring another Secretary," I will never be displeased over a frank expression of opinion. That is what the Britishers were doing with the Britishers. We are now sharing the responsibility. You have agreed to share responsibility. Many of them with whom I have worked, I have no hesitation in saying that they are as patriotic, as loyal and as sincere as myself. Those who think that the leaders were mistaken in giving these guarantees, they do not know their mind. They do not know what would have happened. They do not even now know. Yet we have difficult times ahead. We are talking here under security kept in very difficult circumstances. These people are the instruments. Remove them and I see nothing but a picture of chaos all over the country. I have difficulty because we have paucity of men. Provinces also suffer and they ask for more men.

[The Honourable Sardar Vallabhbhai J. Patel]

We have appointed a Special Commission to recruit about three hundred to four hundred men. They have just been selected. They are not selected from the I.C.S. cadre. They have no experience. But yet we want instruments. They will learn from these people.

Now, what is it that you want to do? You decide. My advice to you is all Members of the Parliament should support the Services, except where any individual member of the Service may be misbehaving or erring in his duty or committing a dereliction of his duties. Then bring it to my notice. I will spare nobody, whoever he is. But if these service people are giving you full value of their Services and more, then try to learn to appreciate them. Forget the past. We fought the Britishers for so many years. I was their bitterest enemy and they regarded me as such but I am very frank and they consider me to be their sincere friend. What did Gandhiji teach us? You are talking of Gandhian ideology and Gandhian philosophy and Gandhian way of administration. Very good. But you come out of the jail and then say, "These men put me in jail. Let me take revenge." That is not the Gandhian way. It is going far away from that.

Therefore for God's sake, let us understand where we are. Today, if you want to take anything from the Service, you touch their heart but do not take a lathi and say, "Who is to give you guarantee? We are a Supreme Parliament." You have supremacy for this kind of thing? To go behind your words? That supremacy will go down in a few days if you do that. That is my appeal to you and sincere appeal to you. You remember that and carry that to the provinces also and to the Congressmen also who are working outside. That is the way of administration. Otherwise, it will go down. And when the country is stabilised and when it is strong enough, then if you want to make any change, it would not be difficult for the service people to be persuaded. If the Princes could be persuaded to give up their kingdoms, how could it be otherwise with the services who are our own people, whose children will be also serving with us, and who have laboured all day and night for the country? They are men who prefer honour, dignity, prestige and deserve the affection of the people. Very few people would like to serve only to be considered as enemies of the country. So, do not speak in those terms and I appeal to you to consider my word and give your judgment,

Shri Mahavir Tyagi : I want to know whether the question which I posed while speaking will be answered by Mr. Munshi or by the Honourable Sardar Patel ? May I repeat the question ?

Mr. President : It is not necessary. Your question has been put and if the Member in charge of the article wishes to reply, he will reply.

Shri T. T. Krishnamachari : I move that the question be now put.

Mr. President : The question is:

"That the question be now put."

The motion was adopted.

Mr. President : Mr. Munshi.

Shri K. M. Munshi : I do not think I should say anything after Sardars' speech.

Mr. President : I have now to put the amendments to vote.

Shri H. V. Kamath : I do not wish amendment Nos. 124, 125 and 128 to be put to the vote. I would rather leave them for the consideration of the Drafting Committee.

Mr. President : The question is:

“That in amendment No. 1 of List I (Second Week), in the proposed new article 283A for the words ‘which he is from time of time serving’ the words ‘as the case may be’ be substituted.”

The amendment was negatived.

Mr. President : The question is:

“That in amendment No. 1 of List I (Second Week), in the proposed new article 283A, for the words ‘the same conditions’ the word ‘conditions’ be substituted.”

The amendment was negatived.

Mr. President : The question is:

“That in amendment No. 1 of List I (Second Week), in the proposed new article 283A, for the words ‘and the same rights’ the words ‘and rules’ be substituted.”

The amendment was negatived.

Mr. President : The question is:

“That in amendment No. 1 of List I (Second Week), in the proposed new article 283A, for the words ‘as respects disciplinary matters or rights’ the words ‘of conduct and discipline’ be substituted.”

The amendment was negatived.

Mr. President : The question is:

“That in amendment No. 1 of List I (Second Week), in the proposed new article 283A, for the words ‘as similar thereto as changed circumstances may permit as that person was entitled to immediately before such commencement’, the words ‘as similar, as changed circumstances may permit to what that person was entitled to immediately before such commencement’ be substituted.”

The amendment was negatived.

Shri H. V. Kamath : I think you will agree that this article is badly drafted. Do you not, Sir?

Mr. President : It is no use my agreeing or disagreeing. We have the vote of the House.

The next are the amendments of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : I am not pressing them. I leave them for consideration of the Drafting Committee.

Mr. President : The question is:

“That the proposed article 283A stand part of the Constitution.”

The motion was adopted.

Article 283A was added to the Constitution.

Article 307

Shri. T. T. Krishnamachari : Sir, I move:

“That for clause (2) of article 307, the following clauses be substituted:—

‘(2) For the purpose of bringing the provisions of any law in force in the territory of India into accord with the provisions of this Constitution, the President may by order make such adaptations and modifications of such law, whether by way of repeal or amendment as may be necessary or expedient, and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such, adaptation or modification shall not be questioned in any court of law.’

(3) Nothing in clause (2) of this article shall be deemed—

- (a) to empower the President to make any adaptation or modification of any law after the expiration of two years from the commencement of this Constitution; or
- (b) to prevent any competent legislature or other competent authority to repeal or amend any law adapted or modified by the President under the said clause.”

“That in Explanation I to article 307, the words ‘but shall not include an Ordinance promulgated under section 88 of the Government of India Act, 1935’ be added at the end.”

[Shri T. T. Krishnamachari]

“That in Explanation II to article 307, for the word ‘has’ the word ‘had’ be substituted and after the words ‘continue to have’ the word ‘such’ be inserted.”

“That for Explanation III to article 307, the following be substituted.—

Explanation III.—Nothing in this article shall be construed as continuing any temporary law in force beyond the date fixed for its expiration or the date on which it would have expired if this Constitution had not come into force.’ ”

Sir, the intention of the Drafting Committee is that clause (1) of article 307 is kept intact. Clause (2) has been varied for one particular purpose. There was some doubt whether the President may make adaptations, modifications, amendments or repeals of existing laws and in so doing whether his action could be questioned in a court of law and how for his action would attract judicial interference. Actually, the original clause (2) says that such adaptations could not be questioned in a court of law. But the idea of the Drafting Committee was that it should be made clear that what should not be questioned should merely be the form and adaptation or modification and an examination of the purpose underlying such action should be left open. For that purpose we have begun this article in clause (2) with these words:

“For the purpose of bringing the provisions of any law in force in the territory of India into accord with the provisions of this Constitution.....”

That is the basic purpose and if the adaptation or modification has been for any other purpose, undoubtedly that will be a matter which will come within the purview of the courts. So far as that purpose has been granted if any question of wording or minor variations are questioned, they cannot be taken to a Court of law.

The second modification that has been admitted in this amendment is to limit the power of the President, in this behalf to a period of two years after the commencement of this Constitution by clause (3) (a). The other sub-clause (b) is taken out from the body of the original clause (2) and it has been made clear that nothing that the President might do shall prevent the appropriate authority from changing any law in force as it wishes to even if it had been adapted by the President. This will not act as a bar to any legislation being brought up before Parliament or before the legislature of a State.

So far as the modifications of the Explanations are concerned, the modification with respect to Explanation I is to restrict its meaning. This shall not apply in regard to ordinances promulgated under section 88 of the Government of India Act a provision, which should have been there. It is a lacuna which we are now seeking to rectify.

So far as the new Explanation (iii) is concerned, it is an amplification of the present Explanation.

Before I resume my seat, I would like to mention that this article should not be confused with article 313, which was passed the other day, where the President has been given power to modify the provision of this Constitution in case of any difficulty. The article under consideration gives the President a very restricted power and it is only in regard to those laws about which the President is advised that they come into conflict with the purpose of the Constitution that a modification will become necessary. It is very necessary because we have provided in article 307(1) that all the laws in force in the territory of India shall continue to remain in force subject only to the fact that they do not offend the provisions of this Constitution. This is a very necessary article and the modifications I have suggested are necessary in view of the fact that a certain lacuna in the original draft of the article has been brought to our notice and I do hope that the House will understand that the purpose we have in mind in suggesting these amendments is limited. The

President's Powers are such that they can be overruled by Parliament or the appropriate legislature and it is only intended to serve during a period of time when neither Parliament nor probably the Legislatures of the States would have enough time to devote the detailed attention that is necessary to amend certain laws in force in our country. Some such action was taken in regard to certain laws when the Government of India Act, 1935, was adapted following the Indian Independence Act and this would follow the same lines.

By and large, the main modifications will be of it formal nature. Possibly, in many cases the words "Governor- General" will have to go, and the word "President" will have to be put in and other similar changes will have to be made. Substantial changes are not likely to happen except so far as we have provided in this Constitution. It is possible certain changes have to be made arising out of the fundamental rights, embodied in the Constitution.

There is one argument I would like to anticipate in view of the fact that certain amendments have been tabled. It has been suggested in these amendments that Parliament should do these adaptations. Well, if Parliament should do it, or Parliament should ratify the action taken by the President in their behalf then Parliament can undertake this question of modification by passing amending legislation. It is because we feel that Parliament will not have the time during the initial period for this purpose that we have provided this article.

Certain suggestions have been made that a tribunal or a committee may be appointed to go into the matter. That is to be left to the proper authorities who undertake this adaptation at the proper time. Whether they would think that the machinery in the hands of Government is suitable for this purpose, or that the machinery can carry out minor modifications, and if there are to be modifications of a major character that public opinion should be consulted or judges should be consulted, it will be for the appropriate executive authority to do what it feels is necessary. There is nothing to bar a tribunal being appointed, or an examination of the existing laws being made by either the Government of India or by the provincial Governments in the future. I hope these arguments will satisfy those people who have tabled amendments and this article will be passed as amended by the amendments that have been moved by me. Sir, I move.

Shri Brajeshwar Prasad : Mr. President, Sir, I move:

"That in amendment No. 2 of List I (Second Week), in the proposed clause (2) of article 307, after the words 'President may' the words 'in consultation with the Chief Justice of the Supreme Court and the Chief Justices of the High Courts of Bombay, Madras and Bengal,' be inserted."

Sir, there is a provision in article 307, I refer to the last line of clause (2), which says that any such modification or adaptation shall not be questioned in a court of law. I am not opposed to this provision; I am in favour of this. But, if we are going to pass such a drastic provision, it is necessary that any such adaptations or modifications which the President may make should be at least in consultation with the highest judicial authorities of the land. We are debarring the courts of law from going into the question. Here, the word President means the Minister for Law. It is he and he alone who will be in charge of modifications and adaptations. The President will have neither the time nor the inclination to go into these questions at all. I want that the Minister for Law should have the assistance of these Chief Justices. It is in no way a criticism or lack of confidence in the merit of the Law Minister, but it is only with a view to strengthen his hands, so that nothing should be left to chance. It is with that end in view that I have suggested this amendment.

Shri H. V. Kamath : Mr. President, Sir, I am one of the people, to use the language of my honourable Friend Mr. T. T. Krishnamachari,—Who have

[Shri H. V. Kamath]

tabled amendments. I wish he had used a better term in conformity with parliamentary practice and decorum and referred to those who have tabled amendments as Members if not honourable Members. I think it is not proper to use the word 'people' in reference to my honourable colleagues who have tabled amendments. That is, however, by the way.

I move amendments 134 and 137 together by your leave:

"That in amendment No. 2 of List I (Second Week), in the proposed clause (2) of article 307, for the words 'repeal or amendment' the words 'alteration or repeal or amendment' be substituted."

"That in amendment No. 2 of List I (Second Week), in sub-clause (b) of the proposed clause (3) of article 307, for the words 'repeal or amend' the words 'alter or repeal or amend' be substituted."

They are more or less formal amendments and they are on the lines of the original draft article 307. Article 307 as it stood in the Draft Constitution reads as follows: "(1) Subject etc., etc., all the laws in force in the territory of India immediately before the commencement of the Constitution shall continue in force therein until altered or repealed or amended by a competent legislature or other competent authority." I think this is a very comprehensive statement of any changes that may be made. I feel, therefore, that the commission of the word 'altered' is a lacuna which this House would do well to remove. I have therefore moved amendments 134 and 137 so as to bring this new draft in conformity with the original draft article 307. I feel they are a more comprehensive and much happier expression of the meaning that we seek to convey.

Shri V. I. Muniswamy Pillay (Madras: General): Mr. President, Sir, I move the amendments that stands in my name, No. 135:

"That in amendment No. 2 of List I (Second Week), in the proposed clause (2) of article 307, the following words be added at the end:—

'but placed before the Parliament for ratification.'"

Sir, I feel that some principle is involved in the amendment that I have given notice of. While speaking on this article, my honourable Friend Mr. T. T. Krishnamachari told us that such a provision has been made in the Constitution to empower the President at times of emergency and also when the legislatures are not in session. I feel, Sir, taking into account what is happening in the provinces where the Governors who promulgate Ordinances feel in their duty to place before the concerned legislature when it meets in session what they have done in the matter of Ordinances or laws which are necessary in the interest of the country. The President as envisaged in the Constitution can look to Parliament as the body which has to ratify whatever action he has taken when the Parliament was not in session. We are only asking the President to place what adaptations or changes he has made in conformity with the constitution so that not only the country, but also the representatives in Parliament should know what the President has done during the absence of the legislature or Parliament. I feel, Sir, that this is as a matter of right due to the legislature or Parliament of the country because every Member is expected to know what the President has as an emergency measure done during the absence of the Parliament. I am sure that the Drafting Committee will consider this matter and accept my amendment. Moreover, it is made clear in clause (3) (b) that "nothing in this clause (2) shall be deemed to prevent any competent legislature or other competent authority to repeal or amend any law adapted or modified by the President under the said clause." Therefore, I feel, Sir, that this amendment can be accepted by the Drafting Committee.

Mr. Naziruddin Ahmad : Mr. President I move:

“That in amendment No. 2 of List I (Second Week), in the proposed clause (3) of article 307:—

- (i) in sub-clause (a), for the words ‘after the expiration of two years from the commencement of this Constitution’ the words ‘after the constitution of the ministries of the Government of India or of the States as the case may be, after the first general election under this Constitution’ be substituted; and
- (ii) in sub-clause (b), the words ‘or other’.Competent authority’ be deleted.”

Sir, in moving these two amendments, I must say that I am in full agreement with the principle of the two clauses which have been moved. In the interim period when we pass through a very rapid transition, numerous anomalies and difficulties will arise and it is therefore necessary to authorise the President to make adaptations and modifications as may be required. The existing laws must be adapted and modified so as to conform to the standard laid down in the new Constitution. That was done when the Government of India Act, 1935, was passed. While agreeing with this principle, my amendment would try to limit the period during which the President may exercise these powers of adaptation and modification. In clause (3), sub-clause (a) it is proposed that the power of the President to make these adaptations and modifications shall be limited to two years. By my amendment instead of this period of two years I want to limit it to a period during which the general elections will be held and ministries will be constituted at the Centre and in the States. After that the Legislatures at the Centre and in the States will be in full operation. We may have general election under the Constitution within a period of two years. If so, there would be anomaly that the legislatures both at the Centre and in the States, will be in full operation and yet the President will be given power to make amendments and changes and modifications in the Constitution. When these legislatures will come into operation, the President’s power should cease. The Legislatures alone should thereafter be entitled to make modifications. Therefore, the power to make these modifications should last till the next general elections are held and ministries constituted. There is no occasion to extend it beyond that. It may be that elections may be delayed and in that case there would be a gap after two years and the time when the new Legislatures would come into force when there will be no authority to make these adaptations. In these circumstances, I should like to place the period till the period when elections are held and ministries constituted.

My second amendment relates to the proposed clause (3) which runs thus :

“Nothing in clause (2) of this article shall be deemed to prevent any competent legislature, or other competent authority to repeal or amend any law adopted or modified by the President under the said clause.”

I would like to delete the words ‘or other competent authority’. I can well appreciate that the adaptation made by President may be changed by any competent legislature, but I fail to see what other competent authority there would be to make necessary changes. Therefore, we should leave this power to make changes in the decisions of the President to the competent legislatures and not to any other authority. I would ask for a clarification as to what competent authority beyond the legislatures may be empowered or should be empowered to make the necessary changes.

Prof. Shibban Lal Saksena : Mr. President, I move :

“That in amendment No. 2 of List I (Second Week), in the proposed clause (2) of article 307, the words ‘and any such adaptation or modification shall not be questioned in any court of law’ be deleted.”

This is a very important article by which we want to bring all the present existing law in consonance with the provisions of the Constitution and we are, only providing the machinery for the adaptation. The President is hereby

[Prof. Shibban Lal Saksena]

authorised to do it. I have no objection to that. I think it is merely bringing the law which in existence today in consonance with the Constitution and I, therefore entirely agree that the President is the proper authority. But what I object to is this, that the adaptation which he may make should not be questionable in any Court of Law. Suppose by mistake or any other reason the modification made is not really in consonance with the purport of this clause and goes beyond this, then where is the authority which will pronounce that the adaptation is not in consonance with the intention of this article, which reads thus—

“For the purpose of bringing the provisions of any law in force in the territory of India into accord with the provisions of this Constitution, etc.”

But what is the machinery provided for seeing that the purpose of this clause at the beginning is given effect to. If the intention is that every such case has to go to the Supreme Court, it will be very troublesome and costly, because the law to be amended will be very wide. I therefore think that the courts which administer that law should be empowered to judge whether the adaptation is, proper or not. The President will not have the time to go through all the law and see it adapted in accordance with the Constitution. The Law Department will do it and even the Law Minister will not have the time to go through it all. This will be done by the clerks of the Department. We do not want that Acts of Parliament passed by former legislatures to be amended and adapted by ordinary clerks and they should not be liable to be challenged in a court of law even on the ground that they are not in consonance with the provisions of the Constitution.

I, therefore, wish that the normal machinery of law should be trusted to see that if any mistake is made in adaptation then courts should be empowered to correct it. If this is not done, many mistakes will be committed which could not be corrected by anybody in the country. If you want the Supreme Court to be approached, then I do not think every litigant will have the power to do it. I do not know whether the Supreme Court will also have the power. But I think the Supreme Court has inherent powers to go into anything. But still in this Constitution we should provide definitely that the adaptation shall be with the purpose mentioned in the first clause and the Court shall be empowered to judge the correctness of the adaptation. The other amendments I do not object to, but I do think that the Drafting Committee will explain what machinery they are providing to see that adaptation made will be only in consonance with the provisions of this Constitution.

Pandit Thakur Das Bhargava (East Punjab: General): Sir, I beg to move:

“That in amendment No. 2 of List I (Second Week), for the proposed clause (2) of article 307 the following be substituted:—

“The President shall, as soon as may be after the commencement of this Constitution, by order, appoint a Committee of experts to examine all the laws in force in the territories of India by whichever authority enacted and to report to him within a period of 8 months if any or any portion of the laws in force is inconsistent with the provisions of this Constitution and what adaptations and modifications are necessary to bring into accord the inconsistent portions with the provisions of this Constitution. The Government shall forthwith take steps to repeal or amend such laws or portions of them as are not in accord with the provisions of this Constitution and unless such laws or portions of laws are repealed or amended by being brought within a further period of one year and four months from the date of report in accord with the provisions of this Constitution, they shall cease to be in force unless they are repealed or amended earlier by any competent authority or declared void by the courts.’ ”

I also beg to move:

“That in amendment No. 2 of List I (Second Week), for the proposed clause (3) of article 307 the following be substituted:—

“(3) For the purpose of bringing the provisions of the laws in force in the territory of India relating to fundamental rights guaranteed by this Constitution into accord with the provisions of this constitution, the President shall, after the commencement of this Constitution, appoint, as soon as may be, a Committee of experts to examine the laws in force in the territory of India with instructions to report if any or any portion of them is inconsistent with the provisions relating to fundamental rights and what adaptations and modifications are necessary to bring such inconsistent laws or portions of laws in accord with the provisions of this Constitution. The Government shall, on the receipt of the report, forthwith take steps to avoid, repeal or amend such laws or portions of them as are not in accord with the guaranteed fundamental rights. Such laws or portions of them as are reported to be inconsistent and not in accord with the guaranteed fundamental rights shall cease to be in force after an year of the commencement of this Constitution if they are not avoided, repealed or amended earlier’.”

I also beg to move:

“That in amendment No. 2 of List I (Second Week), in clause (2) of article 307, for the words ‘made, and any such adaptation or modification shall not be questioned in any court of law’ the word made be substituted.”

Also—

“That in amendment No. 2 of List I (Second Week), in the proposed clause (2) of article 307, for the words ‘and any such adaptations or modifications shall not be questioned in any court of law’ the words ‘except in so far as they are inconsistent with the provisions of this Constitution’ be substituted.”

I also move:

“That in amendment No. 2 of List I (Second Week), in clause (2) of article 307, the words ‘except on the ground that the law so adapted or modified is not in accord with the provisions of this Constitution’ be added at the end.”

And—

“That in amendment No. 2 of List I (Second Week), the proposed clauses (2) and (3) of article 307, be deleted.”

Sir, my purpose in moving these amendments is to give full effect to the provisions that we have already passed, *vide* article 8. Now, these existing laws can easily be divided into two kinds of laws—laws relating to fundamental, guaranteed rights, and the laws with regard to other matters. I want to make a distinction between these two, and as would appear from the amendments I have proposed, some of them relate only to the guaranteed rights and the other relate to the other laws in force. Now, I take very serious exception to the words—“any such adaptation or modification shall not be questioned in any court of law.” And that is why I have proposed these amendments, so that such words may be taken away and such other words substituted as would make the meaning absolutely clear. I am almost despaired of getting the objectionable provision of this section cleared out and I have therefore even proposed that the entire clause (2) be deleted. Sir, I feel full thought has not been given to this matter, I mean as much thought as should have been given to it. If the proposition is accepted as it is, if the proposal of Shri Krishnamachari is carried, the result will be this. Not the legislature, but the Government through its department of law, not the law Member, but the Secretary or clerks will make these adaptations and modifications and all these adaptations and modifications will never come before any Assembly or Legislature. The substantive law of the land will, *ipso facto*, by the Executive fiat, be adapted or modified and become the law of the land. The law shall stand modified or adapted and after that, that law becomes so immutable that the courts will not be able to question them. My submission is, we have passed article 8 already which 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, shall to the extent of such inconsistency be void.”

[Pandit Thakur Das Bhargava]

Now, all those laws which the Courts are today empowered to declare void are sought to be sanctified and made "pucca" by these adaptations. And it is not in accordance with clause (2) of article 8, which says:

"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."

What would happen if a modification or adaptation is made which is really in contravention of the clause? That law cannot be questioned, no court will be able to question it, which means in plain English, that what we give by virtue of article 8(2) and 8(1) is being taken away by this back-door method. I do not say that is the desire of those who have framed this proposal, but my humble submission is, that that is the result, that it will result in a situation like that.

Let me just illustrate this point. Take article 13. We have practically changed the definition of sedition, by the provisions made under this article. Under article 13(3) we have put in "reasonable" before "restrictions on the exercise of the right....." and thereby we have given the courts of the country the opportunity to find if the particular laws which are harsh and onerous should be void or not. They come within the purview of the courts' jurisdiction and any court can declare that such and such law is against the letter and the spirit of article 13 and therefore, void. But as soon as the adaptation is made—and it will not be something enacted by the legislature, but something done by the Executive.—and if the adaptation fails to carry out the purpose, if it is not in consonance with article 8, no court will have the power or the authority to declare such adaptation to be wrong, which means that we give such power to the Executive as we have not entrusted to the legislature even. If this Parliament, after 26th January, 1950, passes any law in respect of these fundamental rights which abridges the liberty of the people, that can be questioned in a court of law, and any court of law can say that Parliament was wrong in so far as it contravened the provisions relating to the fundamental rights. If the adaptation is made in such a manner that it does not carry out the full purpose, then we are absolutely helpless. It is said that there is provision that any legislature can take such action as it deems necessary and repeal the law. Quite right. This is so. May I ask if this right is not completely illusory? Where is the Provincial Legislature which will come to the conclusion that the adaptation or modification made by the President is wrong and sit as a court of appeal on the decision of the President, and go ahead to frame the laws afresh? Where is the individual Member who will be given the facilities to bring in the necessary new provisions? We all know how many obstacles there are in the way of those who want to enact a law. My submission is that when once these adaptations or modifications are made, it will be very difficult to change them. Government will not change them. The local legislatures will not change them, and no private member will have the chance of changing them. It means in plain English that these adaptations or modifications will be there for all time, whether they are in accord with the Constitution or not. Who makes the law of the land? The legislature and not the executive or Secretary or Clerk in the office of the law Member. Even if the President were to pass any Ordinance, that Ordinance will again be placed before the legislature within two months, but so far as these adaptations or modifications are concerned, they will never be placed before the Legislature. Therefore, my submission is that these adaptations will be defective in more ways than one. They will not receive the seal of the Legislature and the courts will not be competent to question those modifications.

Now, Sir, it is said that the first sentence "For the purpose of bringing the provision of any law in force in the territory of India into accord with the provisions of this Constitution" is sufficient guarantee. My submission is that this is no guarantee. My point is that the purpose is there, but what if the purpose is not carried out, if the adaptations or modifications are not good or do not go to the same extent that the Fundamental Rights do? The courts have no power to interfere. If you say, "necessary or expedient" are there, and the courts can go into the question of whether the adaptations are necessary or expedient, my submission is, what is the sense in having these words "shall not be questioned in any court of law"? I understood Mr. Krishnamachari to say that minor things should not be questioned but that only the purpose should be seen. The adaptations can say that for such and such purpose the adaptations are made, but that is not sufficient. The courts will not be able to go into the question of the purpose also. The purpose is there, but there is no guarantee that the adaptations will carry out the purpose. It may be said that such a provision in the shape of section 293 existed in the old Government of India Act of 1935. No doubt that section was there in the Government of India Act, but then the purpose is absolutely different. Here in this Constitution the main change that we have made is that we have given certain Fundamental Rights. In the Act of 1935 there were no Fundamental Rights. I would not care if you make adaptations to the ordinary laws of this country provided you do not touch the rights of the people. You may bring all the laws of the land in accord with the Constitution, but when you go and touch the very delicate rights of the people in general and touch their fundamental rights, then my submission is that the matter becomes of very great importance. In section 293 even these words 'shall not be questioned by any court' do not appear. In the old section 293 you will find that the powers of the courts were not taken away. There the laws were subject to the jurisdiction of the court as before. Now these words have been specifically added that the adaptations or modifications shall not be called in question in any court of law. My main objection is to these words.

It is a secondary objection, though of equal import, that the executive should not be given the right to adapt these laws. I propose that in regard to these Fundamental Rights, a Committee of Experts should be appointed to go into the question. This will be an important Committee and the best heads of the country should be on it. They will go into all the laws and make a report to the President that he may be pleased to see that such and such Acts are enacted, because the law-making power is that of the Legislature and we cannot delegate this power to any President or any other set of people. After the Committee has reported, the Government will take steps to see that such inconsistent laws are repealed. In this I beg to submit that the authority of the court will not be taken away. It is the essence of these Fundamental Rights that the courts are the ultimate authority and possess ultimate sanctions and jurisdiction. After all, if the courts will not safeguard these rights, what chances are there that the executive will do it? Really, you are putting the cart before the horse. In section 293 of the Government of India Act such rights were not touched at all. Only the existing laws were taken into consideration; there was no reference to Fundamental Rights and therefore also no taking away of the jurisdiction of the courts. It is possible that the rights guaranteed by article 13 may be so tampered with in the way of adaptations that we will not be able to change them for years to come.

Therefore it seems to me, Sir, that you have only trumpeted to the whole world that you have given these Fundamental Rights. I do not say that the Law Minister will behave in this manner. I think he will not behave in this manner but he might ask someone in his chamber to go into this matter. I cannot possibly agree to delegate this power to any authority, even including the President or the Law Minister. Let the legislature go into these

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laws and find out whether adaptations are necessary or not. The executive should not change the law of the land in this manner. Mr. Krishnamachari said that these words are not important. All right, take them away, and my main objection would go away. Sir, in 1947 we had a Bill before the Assembly in which many old laws were sought to be repealed by the legislature. Why cannot you bring in a Repealing Bill before the Assembly again? In regard to these Fundamental Rights, people will go to court and the court will be able to hold that such and such law is not in accordance with the provisions of the Constitution. Why not give this power to the Courts? If you want to benefit the people, benefit them in a direct manner. As it is, you may abuse your position and bring disaster to the people.

Shri Alladi Krishnaswami Ayyar (Madras: General): Mr. President, Sir, a great deal of the criticism of the amendment moved by my Friend, Mr. Krishnamachari, proceeds on an entire misapprehension. It is necessary to have in view what exactly is the object of this clause. Our Constitution has made certain fundamental changes in the structure of the Constitution, in the distribution of powers, in the powers vested in particular authorities, in the relation between the Unit Legislatures and the Central Legislature. At the same time, it is not our object to start afresh our career in legislation, but to take over all the enactments under the previous Constitution subject only to the prohibitions and to any special provisions in the present Constitution. It is necessary to have an idea of the number of Statutes, Ordinances, Acts, subordinate Acts, and rules there have been made in all these twenty years after the first adaptation in the year 1935. If every Act, every rule, and every order, is to be subject to the scrutiny of courts and this adaptation is to be canvassed from court to court, it will no doubt afford plenty of opportunities for lawyers and litigants, but it will not be in the larger interests of the country. Therefore, in taking over the whole body of legislation to the new Constitution you first provide that that legislation shall continue to operate unless it is repugnant to the principles of the Constitution.

That is the first principle and having laid that down, it becomes necessary to provide for adaptation. If that adaptation is to be made within the two years when Parliament is overloaded with work in regard to various matters consequent upon the new Constitution, to trouble Parliament with the work of adaptation will be an unwise task. Under those circumstances, what is provided is there will be adaptation by the Government. You need not proceed on the footing that the Governor-General or the President sitting at Delhi is going to make all the adaptations. The Government will be assisted by an expert body. The advisory bodies which my friend suggested may, be utilised for the purpose of making the adaptation, provided they do not become unwieldy and hamper the work of adaptation. The adaptation will have to be done quickly in addition to other work which the Constituent Assembly may have to take upon itself soon after the passing of the Constitution in order to bring the Constitution into effect.

Before I make my comment upon the article as put forward before the House, it is necessary to have in mind what exactly section 293 of the Government of India Act which has been adapted in this article 283 provides. Under the section 293, His Majesty was given the power of adaptation. No limit of time was imposed. The President of the Drafting Committee who was responsible for putting the limitation of these two years thought that a power for an indefinite length of time should not be vested in the President. It must be expedited and the adaptation must be finished within two years. Therefore the limit of two years was placed. Under section 293, the question came up before the Federal Court in the very first case after the new Constitution of 1935 whether an

adaptation can be questioned in a court of law. Sir Maurice Gwyer, the then Chief Justice, delivering the judgment in the U.P. Cantonment Case stated that adaptation could not be questioned at all. We put a limitation in the present article in the opening words, "for the purpose of bringing the provisions of any law enforced in the territory of India in accord with the provisions of this Constitution." It is only for that purpose that this power is to be exercised by the President. This is a very necessary, wholesome, and salutary provision. With my experience in courts in regard to other provisions and bye-laws, I am bold enough to state that there is a general tendency to attack every rule and every Act, and I can say that this provision is most wholesome and salutary. Instead of leaving it to the Supreme Court or Federal Court again to deal with the point whether Sir Maurice Gwyer's decision is to be followed or not or whether some dissenting opinion expressed in the Lahore High Court is to be followed, the position is made clear that the adaptation shall not be questioned in a court of law. It was advisedly, deliberately put in in order to prevent frivolous, immaterial objections being taken. But if the adaptation is so alien to the main provisions of the Constitution to the very purpose of the Constitution, then the court will have the necessary jurisdiction to hold the adaptation invalid. It does not mean that every bye-law, every clause, every sub-clause, every expression, has to be canvassed in the court of law. If the main purpose is kept in view and if the adaptation is not alien to the purpose, it shall not be questioned in a court.

After all, the adaptation is not immutable. It is subject to the intervention of the legislature. If the legislature is vigilant, and sensitive to public opinion as to scrutinise every adaptation, I think there is nothing to prevent it from passing a law when an adaptation is not in accordance with the spirit of the Constitution. We are proceeding on the assumption that the legislature is quite alive to its duty, it is very vigilant, very capable, hard-working, and with the host of lawyers in the country who will surely canvass every bye-law and with a large public who are likely to be affected by it, there is no danger of its not being noticed by the vigilant public or equally vigilant lawyers or equally vigilant legislators. The legislators will be on the watch. The lawyers will be on the watch and the courts are sure to find any lacuna in legislation. Under these circumstances, I submit this is the most salutary provision. Already there is great criticism that the Constitution itself is intended for the benefit of lawyers. The provision in the Constitution that adaptation of the Constitution shall not be questioned in court is a most wholesome one.

Regarding the power of the legislature to intervene, it can do so at any moment. The provision does not stand in the way of the President constituting a body of able advisers like my Friend, Pandit Thakur Das Bhargava who certainly will have the public spirit to assist the President in making the necessary modification and at the same time, as a temporary phase it enables the President to make the necessary adaptation. Unless the President is mad or his Cabinet is mad, they will not violate Fundamental Rights. Of course, here and there in respect of a particular clause, it is possible that the legislature may take a different view, but if there is a tenable ground, the legislature can look after it and it will be competent for the Government or the parties concerned to alter that provision. Under these circumstances, I am sorry that this provision should be taken exception to.

Mr. President : It is suggested that we should meet in the afternoon, so that we might make more progress. So we shall sit again at 4 o'clock.

The Assembly then adjourned for lunch till 4 P.M.

The Assembly re-assembled after lunch at 4 P.M., Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

Shri Biswanath Das (Orissa: General). Sir, the proposed amendment follows very closely the Government of India Act of 1935. If at all there is any difference, it is on the side of stringency. In the Act of 1935, as adapted, this section—I mean section 293—was omitted. We have naturally a right to expect an explanation why this omission was made and why a departure has now been felt necessary in this regard.

Sir, my honourable Friend, Pandit Thakur Das Bhargava, has clearly stated his objections. Most of those are our objections. My honourable Friend, Shri Alladi Krishnaswami Ayyar, representing the Drafting Committee, treated us to some homilies. He stated that the power of the Legislature has not been taken away by this amendment. I want to ask him whether it is necessary that an eminent lawyer like him to explain these elementary principles to us, as if the Members of the Assembly do not know that under a system of responsible Government the 'President' means the Cabinet or the Prime Minister himself. Then again he stated that it is in consonance with the spirit of section 293 that the Orders in Council were being issued by the British Cabinet. When you were trusting the British Government, why cannot you trust your own Government? If at all there is any element of distrust, I say that the boot is on the other leg. So, it is unfair and unfortunate to state that we want a change in the section merely because we do not trust the Ministry. It is not a question of our trusting the Ministry. What has been proposed in this article is that the Honourable Dr. Ambedkar, the Chairman of the Drafting Committee, will transfer all the powers of the Legislature to the Honourable Dr. Ambedkar, the Law Minister of India. Here again we would not probably have so much bother, if he or his Cabinet handled the whole question themselves. Sir, it is a well known fact that Cabinet Ministers are busy-bodies. It is not possible for them to go closely through all the Acts that have to be adapted in this regard.

While discussing this question we have to keep two or three things in view. The first thing is that you have in the Constitution the Fundamental Rights which, were never contemplated; nor were they conceived in the Act of 1935 and much less thought of by the British Government or the British Cabinet. Secondly, you have barred the Jurisdiction of the courts by a specific provision in the Constitution. A point has been made out by our Friend, Shri Alladi Krishnaswami Ayyar, that it is the judicial pronouncement of the highest court. I must tell him again—as I have already suited—that my confidence in the pronouncements of the British judiciary under a system of imperial administration is not as it would be under the pronouncement of a free judiciary in a free India. Until that is done I must plead with him and with the honourable Members of this House that my confidence in the judiciary will be within its limitations.

Sir, a period of limitation of two years has been laid down—I do not know, for what reason. The enormous powers that are vested in the Executive are not at all desirable. When my honourable Friend Shri Alladi Krishnaswami Ayyar was thrusting his homilies on us to trust the executive, it took my breath away. I hardly expected that an eminent jurist and lawyer as he would teach me about

our confidence in our Executive. I would plead with him to carry his logic further. By all means have all confidence. Why then have any law? Leave everything to the administration. Have no laws at all. Have no constitution; no Fundamental Rights are called for because we have it responsible Government and a popular Ministry. This is hardly expected of a very wise and sound jurist of his eminence.

Sir, I must complain in this connection that the Government have not placed all their cards before us. I do realise the fact that the Government is not represented here and the Members of Government are here in their capacity as Members of the House. But it is no doubt a fact that Dr. Ambedkar is also the Law Minister of India, and it is his responsibility and duty to explain to us what steps he has taken up till now in this regard. This is, a very big order that he wants to be given to him. There are thousands of laws, Central and Provincial in operation, including the Regulations passed by the British Government. All these have to continue in operation. Is it possible for ordinary Members, I ask, to undertake the private legislation to modify all these? What has been done by the Ministry of Law? I plead again with the Drafting Committee that the position they have taken so far, as also the action taken by the Law Ministry so far in this regard has not been helpful. My Honourable Friends have made various suggestions.

Mr. President : What is the kind of action which you expect from the Law Ministry on this subject?

Shri Biswanath Das : I am coming to it. In fact I will be failing in my duty if I do not state it and I will iterate. The British Government, before any adaptations were undertaken asked the Government of India and the Law Department of the Government of India to examine all the necessary Statutes. The Government of India were suggesting adaptations and the adaptations suggested by the Law Ministry, then, the Law Department of the Government of India, were being approved and published as the adaptations of the British Government in an Order-in-Council. My complaint in this regard is that neither the Law Department nor the office of the Constituent Assembly have moved an inch in this regard. I expect that they should have kept ready the adaptations and examined the laws in operation.

Mr. President : Without knowing what the Constitution is going to be.

The Honourable Dr. B. R. Ambedkar (Bombay: General): My Friend is thoroughly misinformed. He does not know what is being done.

Shri Biswanath Das : I will be glad if I am misinformed and I will be glad If all this has been done. In which case, my Honourable Friend ought to have placed the whole thing at least by this time—as I said and I repeat—all the cards on the table, and said “I have got them ready, give me the order and I will publish.” I do not agree with those who think that consultations with Chief Justice will improve the matter nor do I agree with those honourable friends who feel that reactions are to be placed before Parliament . The adaptations under the Indian Independence Act were placed before Parliament . But to what effect? Where has the legislature time for private Members to undertake this stupendous task? Under these circumstances, placing of adaptations for the reactions of Parliament will not help.

Another proposal has been placed before honourable Members and that is an Expert Committee. That would be certainly useful and helpful. But I would suggest that we are giving a big order and placing very responsible power and

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authority with the Executive. Therefore, I think it will be fair to the Legislature also if some of the eminent jurists, who happen to be Members of the Legislature, are constituted into a Committee to place recommendations before the Law Ministry so that the Ministry gives them merely legal shape. It should be the responsibility of the Law Ministry to put them into legal form. I am not inclined to place all other powers, importance and responsibility as they are, in the hands of the Executive. In this view of the question, for myself will be fully satisfied if the Honourable the Law Minister or the Drafting Committee say that they are willing and anxious to have an Expert Committee of the Constituent Assembly and the Legislature examines all the laws, and if necessary, asks the Provincial Governments to undertake examination of all the laws and all the adaptations to be put together. It would be unthinkable after responsible Government in a free India to have laws irresponsible in themselves and most of which are out of date and antediluvian and which do not suit the present-day needs of the people to co-exist and operate. In these circumstances, I plead with the Drafting Committee and also with the honourable Members of the Constituent Assembly to consider this important question.

An Honourable Member : The question may now be put.

Shri Rohini Kumar Chaudhuri : Sir, after listening to this debate carefully, I am inclined to support the view expressed by my honourable Friend, Pandit Thakur Das Bhargava. It seems rather preposterous that if a Legislature passes any provision which is inconsistent with the Constitution then any one aggrieved by that would be entitled to bring that fact to the notice of the Court and the Court will not be precluded from considering that question. Supposing any legislation was passed which was inconsistent with any of the Fundamental Rights of the Constitution, then it was up to anybody to move the Court to have that legislation declared illegal and void. It seems rather strange when a similar order or provision was made by the President by virtue of the power of his adaptation and modification—which was inconsistent with the Constitution, we could have no remedy in a court of law. I thought, Sir, there it was not necessary to abrogate this new provision because so long as the adaptation order was inconsistent with any provision of the Constitution, the lower court would have full jurisdiction. But my honourable Friend, Shri Alladi says that in a recent ruling the Federal Court has held that any suit brought to set aside or to declare an adaptation invalid would be out of court. Therefore, Sir, I consider it would be safe and in the interests of all concerned that an amendment of the nature which has been proposed by Pandit Thakur Das Bhargava should be accepted.

I would also like to say that the period of two years prescribed by this article is rather too long. If such a period is there, in some instances the President or his advisers may not taken steps as early as they should. In my opinion, immediate action would be necessary after the passing of the Constitution so far as administration of justice in the tribal areas is concerned. It will be within the recollection of the House that in paragraph 5 of Schedule VI, certain provisions have been laid down on the strength of which the Code of Civil Procedure and the Code of Criminal Procedure could be made enforceable in the tribal areas.

But honourable Members will be surprised to learn that even though there may be a litigation between persons who do not belong to the tribal community, in areas which are not inhabited by tribal people at all, but are within the jurisdiction of the hill area, the Code of Civil Procedure and the Code of Criminal Procedure are not in force. For instance, there any Assistant to Deputy Commissioner who may not have any legal academical qualifications is competent to punish an accused with any sentence up to seven years; and under the present rules if the sentence is more than three years then only an appeal can be filed.

Otherwise, there is no right of appeal. I regard to other matters also, the Civil Procedure Code or the Criminal Procedure Code is not in force. It has been laid down that the courts will be guided by the spirit of the Code of Civil Procedure or the spirit of the Code of Criminal Procedure. This spirit, Sir, it has been very difficult to find at all. Sometimes, the spirit of the Criminal Procedure Code is interpreted in not following the Criminal Procedure at all; sometimes it is interpreted in following the Criminal Procedure Code strictly. Even if my honourable Friend, Dr. Ambedkar or Alladi Krishnaswami Ayyar had been practising in these bills, they would have found it difficult to see where the spirit of the Civil Procedure Code or the spirit of the Criminal Procedure Code lay. Under this paragraph, it is within the competence of the Governor to declare that the Criminal Procedure Code will be enforced in respect of the trial of offences which involve a sentence of imprisonment of five years or more, or transportation or capital sentence. But, unless the law is adapted immediately, this provision of the Constitution will remain merely as a dead letter. This is a very small mercy. Just for a moment, fancy that anybody living in Delhi or Ajmer Merwara being tried, convicted and sentenced to death also without the Criminal Procedure Code being followed. I could have quite understood if this law was applicable in those cases where the indigenous people or the tribal people were the parties. But it is not so. Even if it is a case purely between non-tribals or between a tribal and a non-tribal the Criminal procedure Code is not applicable and in that case no legal procedure is followed; at any rate the right of appeal will not be allowed.

I submit that in order to bring the present law in line with those provisions which have given a small mercy in that the Governor may declare certain provisions of the Criminal Procedure Code to be enforced in a particular area in respect of certain cases, steps should be taken by an amendment or modification of that law so that that law may come into force at an early date. Therefore, I welcome this article which allows an alteration or modification of the existing law so as to bring it in line with the provisions of the Constitution. At the same time, we must be safeguarded against the application of these provisions for adaptation or modification in such a way as may interfere with the fundamental rights given by this Constitution. In such cases of interference, it should be made clear that we should have the right to go to the court, in order to have that adaptation declared invalid. Otherwise, if you leave it at that, in view of the ruling that has been cited, we shall be absolutely powerless to take any step when the President would be pleased to make such an adaptation as would be inconsistent with the provisions of the Constitution.

Mr. President : Closure has already been moved. The question is:

That the question be now put."

The motion was adopted.

Shri T. T. Krishnamachari : Mr. President, let me, at the outset apologise to my honourable Friend, Mr. Kamath, who is not here I see, who took objection to a slip of the tongue on my part when I referred to those honourable Members who moved amendments as people who moved amendments.

The House may recollect that I had tried to anticipate the amendments that were being moved and answer those amendments in advance. The bulk of them, at any rate so far as the amendments moved by my honourable Friends, Mr. Kamath, Mr. Muniswami Pillai, and Prof. Shbibban Lal Saksena, I have attempted to answer in advance. I think that so far as the wording of clause (2) as it now stands is concerned, It is so clear that no mischief can possibly arise out of the wording appearing at the end of that clause, namely, that such modifications and adaptations shall not be questioned in a court of law. Ample provision has been made by the opening words which specifically state that the

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adaptation should be made only for the purpose of bringing the provisions of the law in force in the territory of India into accord with the provisions of this Constitution.

It is only this group of amendments which were tabled by my honourable Friend, Pandit Thakur Das Bhargava which probably require some reply. In his amendment No. 188, in which he seeks to substitute clause (2) by another clause, he has failed to understand the purport of clause (2). The purport of clause (2) is that in so far as it is possible, the machinery at the disposal of the Government would prepare the necessary amount of material for adaptations to be made which will, in all probability, be published as an Order by the President immediately after the Constitution is promulgated. That would be necessary because there will be a number of details, minor in some cases, of a different character in certain other cases which will have to be dealt with in order to bring the laws in force in tune with the provisions of the Constitution.

In the amendment proposed by my honourable Friend, he suggests that a committee should be appointed and that that committee should report within a period of eight months, and that action should be taken later on. What is to happen in the period between the time of the promulgation of the Constitution and the eight months that will naturally elapse until the committee reports? It is obviously impossible that any such thing could possibly be done, if actually the laws that are in force are to be brought in tune with the provisions of this Constitution. As I said in my remarks at the time of moving these amendments, there is nothing to prevent the Government, to prevent the Parliament, from passing a resolution, or prevent the Government from taking the initiative in this matter and appointing a Committee to review the law structure in this country and modernise it and bring it in tune with the principles that are adumbrated in this Constitution. I think my honourable Friend, Pandit Thakur Das Bhargava must wait until the new Constitution is promulgated and either by means of a Bill or by means of a Resolution get the Government to move in the matter, on the lines that he has suggested.

So far as his amendment to clause (3) is concerned, the amendment is such that it takes away the guarantee that is provided in clause (3) of the amendment moved by me. What he has done is merely he has sought to incorporate in his suggested amendment to clause (3) what he had originally thought of moving as a separate article 307-A. The idea that he had when he framed the amendment that he wanted to move as a new article 307-A has been incorporated in clause (3), namely, that something must be done in regard to the fundamental rights, and the question of relating the laws of this country in tune with the fundamental rights.

I therefore feel that my honourable Friend, Pandit Thakur Das Bhargava who is known to this House as a lawyer of considerable eminence and who puts in a lot of hard work in helping this Constitution to be framed has, in this particular instance, allowed his enthusiasm to outrun his usual discretion and tabled an amendment which does not fit in with the particular amendment before the House. It may fit into something else; it may go in as an independent proposition; but it does not fit in this particular amendment. Because, his amendment No. 188, does not fulfil the purpose of clause (2) of the amendment that I have proposed and his amendment No. 189 does not fulfil the purpose of clause(3), that

Pandit Thakur Das Bhargava : So far as the amendment relating to the proposed clause (3) is concerned. it is a separate thing altogether It is not an amendment to clause (2).

Shri T. T. Krishnamachari : Actually, his amendment No. 189 says—

“That in amendment No.2 for the proposed clause (3) the following be substituted.”

I feel that it is not a substitution because it bears no relation whatever to the provisions of clause (3) as I have moved it, and I think there is no mystery about it because the wording of clause (3) is very clear. The wording seeks to empower the President to make adaptations only for a period of two years.

Pandit Thakur Das Bhargaya : It is an amendment to the original article.

Shri T. T. Krishnamachari : Then I stand corrected. If my honourable Friend has brought an amendment at 9-35 A.M. today which is something apart from the amendment, which is on the Order Paper, I am afraid that I must withdraw all the remarks that I have made and merely plead that since the thing bears no relation to the amendment that I have moved, I am unable to furnish a reply and the proper authority probably to give a reply will have to be the Honourable Minister for Law of the Government of India or the Law Minister of the Government of India as it is to be after the 26th January. I feel that the article 307 as amended by the amendments proposed by me fulfils a definite purpose which has been amply justified by the learned arguments furnished by my honourable Friend and colleague, Mr. Alladi Krishnaswami Ayyar, and the House would therefore do well to accept his argument in support of this proposal and I would therefore request the House to accept my amendment and pass article 307 as amended by my amendment.

Shri Amiyo Kumar Ghosh (Bihar: General): I want a clarification of what is really intended to be meant by the words—

“and any such adaptation or modification shall not be questioned in any court of law.”

Because if the President amends or modifies any existing law in accordance with what we have passed in the Constitution then his actions are *intra vires* and no question of raising the matter in any court of law arises. But if the President does anything which is against the spirit of clause (2), *i.e.*, if he amends, modifies or repeals any existing law which is at variance with or repugnant to the provisions laid down in the Constitution then his action is *ultra vires* and certainly it can be questioned in a court of law. What class of cases are really contemplated to come within the limitation provided in the last two lines. Clearly, the cases in which the President acts precisely within his power conferred by this article do not come under those two lines mentioned above so there is only one class of cases that are likely to be governed by the said lines are in which the President acts in contravention to what is laid down in this article because you have not laid down any procedure or rules for the President to act in matters of amending or modifying the existing laws and so no question of irregular exercise of Power arises.

Shri T. T. Krishnamachari : My honourable friend has not followed perhaps my imperfect explanation of the provisions. I wanted him to consider the opening words. The opening words justify the interference by a court to see whether the adaptation has been made in accordance with the opening words *i.e.*, for the purpose of bringing the provisions of any law in force. If it is felt by a Court that it is not for that purpose, undoubtedly the adaptation will be *ultra vires*. If on the other hand it is a matter of merely a question of a different point of view in regard to wording of the adaptation, etc., then it certainly is a matter which we feel ought not to be questioned in any court of law. In any event, nothing would prevent any court from going into the question whether the adaptation was for the purpose intended by this clause *viz.*, for the purpose of bringing the provisions of any law in force. We cannot really state in a

[Shri T. T. Krishnamachari]

Constitution what particular matter is to be *ultra vires* or *intra vires*. The purpose has been clearly indicated and I do not think we can go beyond the words contained in this clause.

Shri Amiyo Kumar Ghosh : If the cases of irregular exercise of jurisdiction and the cases in which the President's action is in accordance with this provision do not come under these two last lines, then certainly there is always a danger of interpreting it so as to include the cases in which the President acts without jurisdiction.

Mr. President : I will now put the amendments to vote.

The question is:

"That in amendment No. 2 of List I (Second Week), in the proposed clause (2) of article 307, after the words 'President may' the words 'in consultation with the Chief Justice of the Supreme Court and the Chief Justices of the High Courts of Bombay, Madras and Bengal' be inserted."

The amendment was negatived.

Mr. President : No. 134.

The question is:

"That in amendment No. 2 of List I (Second Week), in the proposed clause (2) of article 307, for the words 'repeal or amendment' the words 'alteration or repeal or amendment' be substituted."

The amendment was negatived.

Mr. President : No. 135.

Shri V. I. Muniswamy Pillay : Sir, I would ask for leave to withdraw my amendment.

The Amendment was by leave of the Assembly withdrawn.

Mr. President : 136. I will put the two parts separately.

The question is:

"That in amendment No. 2 of List I in the proposed clause (3) of article 307—

"(i) in sub-clause (a), for the words 'after the expiration of two years from the commencement of this Constitution the words 'after the constitution of the Ministries of the Government of India or of the States as the case may be, after the first general election under this Constitution. be substituted.' "

The amendment was negatived.

Mr. President : The question is:

"That in sub-clause (b), the words 'or other competent authority' be deleted."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 2 of List I in sub-clause (b) of the proposed clause (3) of article 307 for the words 'repeal or amend' the words 'alter or repeal or amend' be substituted.

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 2 of List I in the proposed clause (2) of article 307, the words 'and any such adaptation or modification shall not be questioned in any court of law' be deleted."

The amendment was negatived.

Mr. President : The question is:

“That in amendment No. 2 of List I (Second Week), the proposed clause (2) and (3) of article 307 be deleted.”

The amendment was negatived.

Mr. President : The question is:

“That in amendment No.2 of List I (Second Week), the proposed clause (2) of article 307, the following be substituted:—

‘The President shall, as soon as may be after the commencement of this Constitution, by order, appoint a Committee of experts to examine all the laws in force in the territories of India by whichsoever authority enacted and to report to him within a period of 8 months if any or any portion of the laws in force is inconsistent with the provisions of this Constitution and what adaptations and modifications are necessary to bring into accord the inconsistent portions with the provisions of this Constitution. The Government shall forthwith take steps to repeal or amend such laws or portions of them as are not in accord with the provisions of this Constitution and unless such laws or portions of laws are repealed or amended by being brought within a further period of one year and four months from the date of report in accord with the provisions of this Constitution, they shall cease to be in force unless they are repealed or amended earlier by any competent authority or declared void by the courts.’”

The amendment was negatived.

Mr. President : The question is:

“That in amendment No.2 of List I (Second Week), the proposed clause (2) of article 307, the following be substituted:—

‘(3) For the purpose of bringing the provisions of the laws in force in the territory of India relating to fundamental rights guaranteed by this constitution into accord with the provisions of this Constitution, the President shall, after the commencement of this constitution, appoint, as soon as may be, a Committee of experts to examine the laws in force in the territory of India with instructions to report if any or any portion of them is inconsistent with the provisions relating to fundamental rights and what adaptations and modifications are necessary to bring such inconsistent laws or portions of laws in accord with the provision of this Constitution. The Government shall, on the receipt of the report forthwith take steps to avoid repeal or amend such laws or portions of them as are not in accord with the guaranteed fundamental rights. Such laws or portions of them as are reported to be inconsistent and not in accord with the guaranteed fundamental rights shall cease to be in force after one year of the commencement of this Constitution if they are not avoided, repealed or amended earlier.’”

The amendment was negatived.

Mr. President : The question is:

“That in amendment No.2 of List I (Second Week), in the proposed clause (2) of article 307, for the words ‘made and any such adaptation or modification shall not be questioned in any court of law’ the word ‘made’ be substituted.”

The amendment was negatived.

Mr. President : The question is:

“That in amendment No. 2 of List I (Second Week), in the proposed clause (2) of article 307, for the words ‘and any such adaptation or modification shall not be questioned in any court of law’ the words ‘except in so far as they are inconsistent with the provisions of this Constitution’ be substituted.”

The amendment was negatived.

Mr. President : The question is:

“That in amendment No. 2 of List I (Second Week), in clause (2) of article 307, the words ‘except on the ground that the law so adapted or modified is not in accord with the provisions of this Constitution’ be added at the end.”

The amendment was negatived.

Mr. President : The question is:

“That for clause (2) of article 307, the following clauses be substituted:—

(2) For the purpose of bringing the provisions of any law in force in the territory of India into accord with the provisions of this Constitution, the President may by order make such adaptations and modifications of such law, whether by way of repeal or amendment as may be necessary or expedient, and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law.

(3) Nothing in clause (2) of this article shall be deemed—

- (a) to empower the President to make any adaption or modification of any law after the expiration of two years from the commencement of this Constitution; or
- (b) to prevent any competent legislature or other competent authority to repeal or amend any law adapted or modified by the President under the said clause.”

3. That in Explanation I to article 307, the words ‘ but shall not include an Ordinance promulgated under Section 88 of the Government of India Act, 1935’ be added at the end.

4. That in Explanation II to article 307, for the word ‘has’ the word ‘had’ be substituted and after the words ‘continue to have’ the word ‘such’ be inserted.

5. That for Explanation III to article 307, the following be substituted:—

Explanation III.—Nothing in this article shall be construed as continuing any temporary law in force beyond the date fixed for its expiration, or the date on which it would have expired if this Constitution had not come into force.”

The amendment was adopted.

Mr. President : The question is:

“That article 307, as amended, stand part of the Constitution.”

The motion was adopted.

Article 307, as amended, was added to the Constitution.

Article 308

Mr. President : We go to article 308. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

“That for clause (3) of article 308 the following clause be substituted:—

‘(3) Nothing in this Constitution shall operate to invalidate the exercise of jurisdiction by His Majesty in Council to dispose of appeals and petitions from, or in respect of, any judgment, decree or order of any court within the territory of India in so far as the exercise of such jurisdiction is authorised by law, and any order of His Majesty in Council made on any such appeal or petition after the commencement of this Constitution shall for all purposes have effect as if it were an order or decree made by the Supreme Court in the exercise of the jurisdiction conferred on such court by this constitution.’ ”

Also:

“That after clause (3) of article 308, the following new clause be inserted:—

‘(3a) On and from the date of commencement of this Constitution the jurisdiction of the authority functioning as the Privy Council in a State for the time being specified in Part III of the First Schedule to entertain and dispose of appeals and petitions from or in respect of any judgment, decree or order of any court within that State shall cease, and all appeals and other proceedings pending before the said authority on the said date shall be transferred to, and disposed of, by the Supreme Court.’ ”

Sir, the purpose of the first amendment is merely to continue the authority of the Privy Council to dispose of certain appeals which might be pending before it under the law which the Constituent Assembly very recently passed—section 4—in case they are not finally disposed of before the 26th January,

assuming that to be the date on which this Constitution comes into existence. The important words are—"to dispose of the appeal". There is no power to entertain an appeal. And the other important words are—"such jurisdiction authorised by law", that is to say, references to the recent Act that was passed. The Privy Council will have no other jurisdiction no more jurisdiction than what we have conferred. It has been so arranged by consultation that in all probability, on the date on which this Constitution comes into existence the Privy Council would have disposed of all the cases which had been left to them for disposal under that particular enactment. But it might be that either a case remains part-heard, or case has been disposed of in the sense that the hearing has been closed, but the decree has not been drawn, and in that sense it is pending before them. It was felt that rather than to provide for a transfer of undisposed or part-heard cases to the Supreme Court which would cause a great deal of hardship to litigants, it was desirable, to make an exception to our general rule, that the jurisdiction of the Privy Council will end on the date on which the Constitution comes into existence. That is the main purpose of amendment No. 6.

With regard to amendment No. 7, it is well-known that in some of the India States there are Privy Councils which supervise the judgments of their High Courts, for the reason that they did not recognise the jurisdiction of the Privy Council or rather, the Privy Council of His Majesty in England. They, therefore, had their own Privy Council. Now it is felt that in view of the provision in the Constitution that there should be direct relationship between the Supreme Court and the High Courts in the different States, both in Part III and in Part I, this intermediary institution of a Privy Council of an Indian State in Part III should be statutorily put an end to, so that on the 26th January, all appeals in any State from a High Court in a State in Part III will automatically come up to be disposed of by the Supreme Court.

I am told that these Privy Councils are called by different names in the different States. If that is so, the Drafting Committee proposes to get over that difficulty by having a definition of Privy Council in our article 306 so as to cover the different nomenclature and variations of these institutions.

Mr. President : Amendment Nos. 138 and 139—Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : Mr. President, Sir, I need not move No. 138 because that means opposition to this clause. With regard to No. 139, it is an amendment of a verbal nature and I shall leave it to the discretion of the Drafting committee.

With regard to clause (3), empowering His Majesty in Council to dispose of appeals and petitions, even after the 26th January, 1950—the date when the Constitution comes into operation—it seem to be some to be somewhat startling. Only the other day we passed an Act in this House transferring all appeals and petitions pending before the Judicial Committee to the Federal Court. There were, however, certain exceptions. One exception was petition for leave. It was provided that if there was any petition for leave, fixed for hearing during the Michaelmas term which begins from today, in the Privy Council, they may merely grant or refuse leave. So the effect of this was that if the Privy Council did not give any leave, the matter was absolutely concluded and final. But if any leave was given, the Privy Council would not be entitled to hear it further. The further hearing will be held in the Federal Court and later on in the Supreme Court when the Federal Court is converted into the Supreme Court. Then there are certain other matters which may also be taken into consideration by the Privy Council, namely, appeals which have been heard, in

[Mr. Naziruddin Ahmad]

which the Judicial Committee has pronounced its judgment, but its final acceptance by His Majesty has not yet been communicated. In those cases His Majesty would be entitled to accept the recommendations of the Privy Council even after that date.

At the time when the Act was being considered in the House, we were given to understand that there was no appeal which would be pending before the Privy Council from India. The 'only pending matters would be applications for leave, and if the applications are granted, then of course, the matter will be further heard in India. The only petition pending relates to Godse appeals. No other petition is pending. With regard to appeals', there would be nothing pending, except the acceptance of the recommendations of the Judicial Committee by His Majesty himself. But this acceptance by His Majesty is automatic and is never delayed. So there is no need, for clause (C) which is expressed in a needlessly 'wide form. This House has repeatedly asserted that all appeals must henceforth be heard by the Federal Court, but still this old idea seems to linger on in one shape or other, and clause (3) perpetuates that old idea which has been definitely given up by the House. During the arguments Dr. Ambedkar has referred to Section 4 of the recently passed Act. Section 4 of the recently passed Act runs thus:

"Nothing contained in Section 2 shall affect the jurisdiction of His Majesty in Council to dispose of—

- (a) any Indian appeal or petition on which the Judicial Committee of the Privy Council has before the appointed date delivered judgement, or as the case may be, reported to His Majesty, but which has not been determined by an order in Council of His Majesty;

The appointed day is today, i. e., the 10th October. If any Judgement has been passed before today, i. e., up to yesterday, but His Majesty has not signified his assent thereto the assent may be given. Then we come to clause (b):

"any Indian appeal or petition on which the Judicial Committee has, after hearing the parties, reserved judgment or order;"

and (c).

"any Indian appeal which has been entered before the appointed day in the list of business of the Judicial Committee for the Michaelmas sittings of the year 1949 and which after that day is not directed to be removed therefrom by or under the authority of the Judicial Committee."

So, if any appeal is pending for the present term in the Privy Council today this will be disposed of unless it is directed to be heard in India, but by virtue of the Act we have passed, the Privy Council will be bound to direct the transfer of these appeals to India. But it is well known that no Indian matters, other than the Godse matter, has been entered in the list. Then we come to clause (d).

"any Indian petition which has been lodged before the appointed day in the Registry of the Privy Council."

That is, petition for leave and other things, will also be merely heard, and special leave may be given or refused. If it is refused, there is an end of the matter. If it is allowed, then also there is an end of the matter, because the matter returns to India.

I submit, therefore, that clause (3) is absolutely too wide and embraces imaginary cases which do not exist. We should have a precise knowledge of what cases are pending before their Lordships of the Privy Council, how many there are, how many would be automatically transferred after the appointed day, the 10 October, that is, today and if any case would remain. We should have a clear picture of what matters there may possibly be which may be

pending before them and which may be disposed of under clause (3) even after the 26th January, 1950, the provisional date on which this Constitution will come into operation. We should really have a clear picture of the existing state of affairs instead of enacting a broad section dealing with all sorts of imaginary and hypothetical cases. I think after the final Independence of India on the 26th January, for these powers to linger in the Judicial Committee would be somewhat extraordinary in view of the Constitution that we have so far adopted and in view of our shedding our Dominion status, and acquiring an Independent status. In these circumstances, Sir, I submit that clause (3) should be deleted and not accepted. The matter should be clearly analysed and the House should be informed as to what are the matters which really might fall within the purview of clause (3). I therefore oppose clause (3) until the matter is clarified.

Mr. President : Dr. Deshmukh:

Dr. P. S. Deshmukh : I am not moving my amendment, Sir.

Mr. President : Mr. Shibban Lal Saksena's amendment is for deleting it. You can speak on it after the other amendments have been moved.

Mr. Mahavir Tyagi.

Shri Mahavir Tyagi : I am not moving my amendment, Sir.

Mr. President : Mr. Shibban Lal Saksena, you can speak on it.

Prof. Shibban Lal Saksena : Sir, I beg to move:

"That in amendments, Nos. 6 and 7 of List I (Second Week), the proposed clause (3) be deleted, and the proposed new clause 2 (a) be re-numbered as (3)."

Mr. President : It is not necessary to move it. You can speak on it.

Prof. Shibban Lal Saksena : This amendment is for the deletion of a clause only, not of an article. Sir, my objection to this clause (3) is that after the 26th January, I do not want that His Majesty in Council should have anything to do with this country. We shall become a completely free Republic on that day and the provision of this article which contemplates that His Majesty in Council shall be authorised to hear appeals pending on that day is, I think, derogatory to our independence. Objection may be raised that some appeals may be pending and that the litigants concerned will be put to great difficulty, but I want to draw the attention of this House to the footnote on page 153 of the Draft Constitution. In fact, the Drafting Committee themselves had originally under clause (3) of article 308 contemplated that the jurisdiction of the Privy Council shall cease on that date.

"On and from the date of commencement of this Constitution the jurisdiction of His Majesty in Council to entertain and dispose of appeals and petitions from or in respect of any decree or order of any court within the territory of India including the jurisdiction in respect of criminal matters exercisable by His Majesty by virtue of His Majesty's prerogative shall cease, and all appeals and other proceedings pending before His Majesty in Council on the said date shall be transferred to, and disposed of, by the Supreme Court."

So in the original article they had themselves contemplated that the jurisdiction of the Privy Council shall cease on the date on which this Constitution will come into force. The footnote says—

"The Committee thinks that all appeals and other proceedings pending before His Majesty in Council shall be finally disposed of by the time the Constitution comes into operation. If, however, some appeals or other proceedings remain pending before His Majesty in Council at the time of the commencement of the Constitution and any difficulty is experienced 'with regard to their transfer to, or disposal by the Supreme Court, the President may pass necessary orders under the 'removal of difficulties' (article 313)."

This is what the Drafting Committee have said in the footnote to the original article 308. I do not see that in view of the fact that we have passed

[Prof. Shibban Lal Saksena]

article 313, there is any need for this new clause (3) which contemplates that the jurisdiction of the Privy Council may continue even after the 26th January when we will be a free and independent country. I think that we should not disfigure the Constitution by providing for the intervention of the Privy Council even after we have attained full independence. I think there has been some mistake here, because, article 313 is quite sufficient and there is no need for this clause (3) in article 308. Our Constitution should not be disfigured by this clause.

Mr. President : Dr. Ambedkar, would you like to say anything ?

The Honourable Dr. B. R. Ambedkar : Sir, I do not think that anything that has been urged in favour of the amendments that have been moved raises any matter of substance. It is a more a matter of sentiment, and I think from the point of view of convenience it is much better that we should have this clause and not feel in any way humiliated in doing it, because even if the Privy Council were to continue to exercise jurisdiction, within the limited terms mentioned in clause (3), it should not be forgotten, and I think my friends who have moved the amendments do seem to have forgotten the fact, that that jurisdiction is not the inherent jurisdiction of the Privy Council but the jurisdiction which this Assembly has conferred upon them. The Privy Council as a matter of fact would be acting as the agent of this Assembly to do a certain amount of necessary and important work. I, therefore, do not think there is any cause for feeling any humiliation or that we are really bartering away our independence.

With regard to the point raised by my Friend Prof. Saksena in which he referred to the footnote to article 308. I am quite free to confess that on a better consideration, it was found by the Drafting Committee that the removal of difficulties clause may not be properly used for this purpose. In order to remove all doubt, we thought it was better to have a separate clause like this to confer jurisdiction by the Constitution itself.

Mr. President : Then I will put the amendments to vote. There is only one moved by Prof. Shibban Lal Saksena No. 177. The question is :

“That in amendment Nos. 6 and 7 of List I (Second Week), the proposed clause (3) deleted and the proposed new clause 3(a) be renumbered as (3).”

The amendment was negatived.

Mr. President : Then I put the amendment moved by Dr. Ambedkar. The question is:

“That for clause (3) of article 308, the following clause be substituted:-

“(3) Nothing in this Constitution shall operate to invalidate the exercise of jurisdiction by His Majesty in Council to dispose of appeals and petitions from, or in respect of ; any judgment, decree or order of any court within the territory of India in so far as the exercise of such jurisdiction is authorised by law, and any order of His Majesty in Council made on any such appeal or petition after the commencement of this Constitution shall for all purposes have effect as if it were an order or decree made by the Supreme Court in the exercise of the jurisdiction conferred on such court by this Constitution.”

The amendment was adopted.

Mr. President : Then I put amendment No. 7. The question is:

“That after clause (3) of article 308, the following new clause be inserted:—

“(3a) On and from the date of commencement of this Constitution the jurisdiction of the authority functioning as the Privy Council in a State for the time being specified in Part III of the First Schedule to entertain and dispose of appeals and petitions from or in respect of any judgment, decree or order of any court within that State shall cease, and all appeals and other proceedings pending before the said authority on the said date shall be transferred to, and disposed of, by the Supreme Court.”

The amendment was adopted.

Mr. President : The question is:

“That article 308, as amended stand part of the Constitution.”

The motion was adopted.

Article 308, as amended, was added to the Constitution.

Article 310

Honourable Dr. B. R. Ambedkar : Sir, I move:—

“That for article 310, the following be substituted:—

310. (1) Notwithstanding anything contained in clause (2) of article- 193 of this Constitution, the judges of a High Court in any Province holding office immediately before the date of commencement of this Constitution shall, unless they have elected otherwise, become on that date the judges of the High Court in the corresponding State, and shall thereupon be entitled to such salaries and allowances and to such rights in respect of leave and pensions as are provided for under article 197 of this Constitution in respect of the judges of such High Court.

(2) The judges of a High Court in any Indian State corresponding to any State for the time being specified in Part III of the First Schedule holding office immediately before the date of commencement of this Constitution shall, unless they have elected otherwise, become on that date the judges of the High Court in the State so specified and shall, notwithstanding anything contained in clauses (1) and (2) of article 193 of this Constitution but subject to the proviso to clause (1) of that article, continue to hold office until the expiration of such period as the President may by order determine.

(3) In this article the expression ‘judge’ does not include an acting judge or an additional judge.”

this article is merely what we used to call a “carry over article” merely carrying over the incumbents to the new offices in the new High Courts if they choose to elect to be appointed.

Mr. President : Amendment No. 88.

Mr. Naziruddin Ahmad : I am not moving 88. I shall move 141.

Shri R. K. Sidhwa : Mr. President, I move :

“That in amendment No. 87 above, in clause (1) of the proposed article 310, after the word and figure ‘article 197’ the words ‘and Second Schedule’ be inserted.”

My amendment is a merely verbal one. My object in moving it is this. Reference has been made to article 197 in connection with the salary of the High Court Judges. The salary of the High Court Judges features in Second Schedule and I thought it advisable to mention it along with the article 197. Schedule is an important part of the Constitution, particularly in reference to this article wherein the salaries, allowances and other subjects relating to pensions will be mentioned. Therefore, in order to make it quite clear I have moved that the words “and Second Schedule” may be added to the words “article 197”.

Mr. Naziruddin Ahmad: Sir, I move:

“That in amendment No. 8 of List I (Second Week), in clause (1) of the proposed article, 310, for the words ‘as are provided for under article 197 of this Constitution in respect of the judges of such High Court the words as they were entitled to immediately before the said commencement’ be substituted.”

Clause (1) of this article provides that the Judges of a High Court would on the date on which the Constitution comes into force (provisionally on the 26th of January 1950), shall continue to be Judges of the same High Court.

The Honourable Dr. B. R. Ambedkar : May I draw attention to the fact that this Amendment anticipates Schedule 11 ? This matter is to be dealt with under Schedule 11 and the proper time would be when Schedule 11 is before the House.

Mr. Naziruddin Ahmad : I have carefully considered that also, but the matter would not be fully covered. There the scale of salary of the Judges after the commencement of the Constitution will be provided, but here the matter is entirely different. My amendment says that the pay which they were receiving immediately before the commencement of this Constitution, i.e. on the 25th of January 1950,—they will receive the same pay and enjoy the same conditions from 26th January also. The Schedule deals with the new scale of pay. That is an entirely different matter.

I submit there is no need for clause (1). The only need for this clause so far as I can see, is to justify the reduction of the pay of the existing Judges in an indirect manner. In fact, on the 26th of January, it is clear that even apart from this clause (1) of article 310, those Judges will continue to be the Judges of the High Court because the same High Court continues. We have not provided for similar continuance in the case of other public servants. Every one who is a public servant on the 25th of January will certainly continue to be the same servant on the 26th of January unless he is meanwhile dismissed or has resigned or is discharged or is dead. The continuance of his service as a Judge of a High Court from the 25th to the 26th January is automatic and no authority was needed as it is attempted to be given under clause (1). I submit that clause (1) from that point of view is absolutely unnecessary. But it introduces another idea, namely, it is an indirect attempt to reduce the pay of the existing Judges. In fact, so far as the existing Judges are concerned, they have a fixed scale of pay under existing conditions. Even if there was not this clause, they would have been receiving the same pay on and from the 26th January. The real purpose of the clause is to reduce the pay of the existing Judges. I submit that their pay should not be reduced, because they are receiving a particular pay on a contract on which they were appointed. Judges of the High Court are appointed from very good lawyers who must be supposed to have been earning a very decent incomes. There were only two conditions attached to the appointment of the High Court Judges, namely, they were to continue in the usual course till they attained the age of sixty, and secondly, they would not be allowed thereafter to practise in the High Court in which they were Judges and courts subordinate thereto. But today we are enacting conditions that their pay would be reduced and, further, on the attainment of the sixtieth year every High Court Judge would be precluded from practising not only 'in the High Court to which he is attached, or the subordinate Courts thereto, but in all other Courts, even outside the purview of that High Court, namely in the High Courts of other States and also in the Supreme Court. This would be breach of contract with them in two respects.

Dr. Bakhshi Tek Chand (East Punjab: General): May I make a suggestion ? Will it not be proper to consider this matter when the Second Schedule is being considered ? Amendment No. 11 to the Second Schedule (which stands in the name of Dr. Ambedkar) covers the case of salaries of the Judges who were appointed on or before the 31st day of October 1948. Instead of dealing with this matter piecemeal, will it not be more convenient to deal with this, amendment when the Second Schedule is taken up? As will be seen from amendment No. 11, it does not deal merely with the salaries of Judges who will be appointed under the New Constitution but also has reference to the salary of judges who had been appointed before that date and will be working in the High Courts on the date of the commencement of this Constitution. If this amendment of Mr. Naziruddin Ahmad is lost, this might affect the amendments to the Schedule.

Mr. Naziruddin Ahmad : If it is proposed to consider this amendment along with amendments to Schedule IV I have no objection. But this is the proper time to raise the point. As to the contention that if this amendment is lost, the other amendment will also be considered as lost. I do not agree. This is

an amendment to save the pay of existing Judges, irrespective of the fact that they were appointed before a certain date. But the loss of this amendment will not mean the loss of the other amendment. As to the suggestion of Dr. Bakhshi Tek Chand that I should move this as an amendment to amendment No. 11, I await your instructions in this matter.

Mr. President : I do not think that the passing of this clause as it is will in any way affect the Schedule. It will not come in the way of the Schedule. In any case, I shall not rule that out on that ground.

Mr. Naziruddin Ahmad : That amendment is that the pay of the Judges who were appointed before a certain date would be saved. But my point was that the pay of Judges as they were on the 25th of January 1950 should be saved. There is a slight difference between this and that amendment of Dr. Ambedkar. I submit that the amendment of Dr. Ambedkar has been sent in after my amendment was circulated. It is really an attempt to remedy the situation to a certain extent, but it does not go far enough, to the extent I wish it to go. Sir, I shall certainly abide by your ruling.

Mr. President : If you like you may table another amendment to cover the point which you have now raised. Does anyone wish to say anything about this ?

The Honourable Dr. B. R. Ambedkar : There is no question of principle here.

Mr. President : There is one amendment moved by Mr. Sidhwa; that also is of a verbal character. Shall I put it to vote ?

Shri R. K. Sidhwa : I leave it to the Drafting Committee.

Mr. President : The question is:

“That for article 310. the following be substituted;—

Provisions as to Judges of High Court	310. (1) Notwithstanding anything contained in clause (2) of article 193 of this Constitution, the judges of a High Court in any Province holding office immediately before the date of commencement of this Constitution shall, unless they have elected otherwise, become on that date the judges of the High Court in the corresponding State, and shall thereupon be entitled to such salaries and allowances and to such rights in respect of leave and pensions as are provided for under article 197 of this Constitution in respect of the judges of such High Court.
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(2) The judges of a High Court in any Indian State corresponding to any State for the time being specified in Part III of the First Schedule holding office immediately before the date of commencement of this Constitution shall, unless they have elected otherwise, become on that date the judges of the High Court in the State so specified and shall notwithstanding anything contained in clauses (1) and (2) of article 193 of this Constitution but subject to the proviso to clause (1) of that article, continue to hold office until the expiration of such period as the President may by order determine.

(3) In this article the expression ‘judge’ does not include an acting judge or an additional Judge.”

The motion was adopted.

Article 310 was added to the Constitution.

Article 311

The Honourable Dr. B. R. Ambedkar : Sir, I move:

“That for article 311, the following article be substituted:—

Provisions as to provisional Parliament of the Union and the Speaker and Deputy Speaker thereof.	311. (1) Until both Houses of Parliament have been duly constituted and summoned to meet for the first session under the provisions of this Constitution, the body functioning as the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution shall exercise all the powers and perform all the duties conferred by the provisions of this Constitution on Parliament.
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Explanation.—For the purposes of this clause, the Constituent Assembly of the Dominion India includes—

- (i) the members chosen to represent any State or other territory for which representation is provided under clause (2) of this article, and

[The Honourable Dr. B. R. Ambedkar]

(ii) the members chosen to fill casual vacancies in the said Assembly.

(2) The President may by rules provide for—

- (a) the representation in the provisional Parliament functioning under clause (1) of this article of any State or other territory which was not represented in the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution,
- (b) the manner in which the representatives of such States or other territories in the provisional Parliament shall be chosen, and
- (c) the qualifications to be possessed by such representatives.

(3) If a member of the Constituent Assembly of the Dominion of India was on the sixth day of October, 1949, also a member of a House of the Legislature of a Governor's Province or an Indian State, then, as from the date of commencement of this Constitution that person's seat in the said Assembly shall, unless he has ceased to be a member thereof earlier, become vacant, and every such vacancy shall be deemed to be a casual vacancy.

(4) Any person holding office immediately before the commencement of this Constitution as Speaker or Deputy Speaker of the Constituent Assembly when functioning as the Dominion Legislature under the Government of India Act, 1935, shall continue to be the Speaker or, as the case may be, the Deputy Speaker of the provisional Parliament functioning under clause (1) of this article.

Sir, I move:

"That in amendment No. 9 of List I (Second Week), for clause (3) of the proposed article 31 1, the following be substituted:—

'(3) If a member of the Constituent Assembly of the Dominion of India was on the sixth day of October, 1949, or thereafter becomes at any time before the commencement of this Constitution a member of a House of the Legislature of a Governor's Province or an Indian State corresponding to any State for the time being specified in Part III of the First Schedule or a minister for any such State, then as from the date of commencement of this Constitution the seat of such member in the Constituent Assembly shall, unless he has ceased to be a member of that Assembly earlier, become vacant and every such vacancy shall be deemed to be a casual vacancy'."

Sir, I move:

"That in amendment No. 9 of List I (Second Week), after clause (3) of the proposed article 31 1, the following new clause be inserted:—

'(3a) Notwithstanding that any such vacancy in the Constituent Assembly of the Dominion of India as is mentioned in clause (3) of this article has not occurred under that clause, steps may be taken before the commencement of this Constitution for the filling of such vacancy, but any person chosen before such commencement to fill the vacancy shall not be entitled to take his seat in the said Assembly until after the vacancy has so occurred'."

The object of this clause is that when constituting a provisional Parliament, It is proposed to dispense with what is called double membership.

The other provisions are merely ancillary.

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

"That in amendment No. 9 of List I (Second Week), in clause (1) of the proposed article 311, after the word 'Until' the words 'such time' be inserted."

Sir, I move:

"That in amendment No. 9 of List I (Second Week) in clause (1) of the proposed article 311, the words 'the body functioning as' be deleted."

Sir, I move :

"That in amendment No. 9 of List I (Second Week) in the proposed article 311, for the words 'Constituent Assembly of the Dominion of India' wherever they occur, the words 'Constituent Assembly of India' be substituted."

Sir, I move:

“That in amendment No. 9 of List I (Second Week), in clause (1) of the proposed article 311, for the words ‘immediately before the commencement of this Constitution shall’ the words ‘shall itself’ be substituted.”

I shall not move amendment No. 147.

Sir, I move:

“That in amendment No. 9 of List I (Second Week), in clause (2) of the proposed article 311, after the word ‘rules’ the words which shall as far as practicable, conform to those adopted by the Constituent Assembly’ be inserted.”

Sir, I move:

“That in amendment No. 9 of List I (Second Week), in clause (3) of the proposed article 311, after the words ‘an Indian State’ the words ‘or Union of States’ be inserted.”

Sir, I move:

“That in amendment No. 9 of List I (Second Week), in clause (4) of the proposed article 311, the words ‘or Deputy Speaker’ be deleted.”

Sir, I move:

“That in amendment No. 9 of List I (Second Week), in clause (4) of the proposed article 311, the words ‘or, as the case may be the Deputy Speaker’ be deleted.”

If the amendments to clause (1), which appear in List 3, Second Week, are acceptable to the House, then this clause would read as follows:

“Until such time as both Houses of Parliament have been duly constituted and summoned to meet for the first session under the provisions of this Constitution, the Constituent Assembly of India shall itself exercise all the powers and perform all the duties conferred by the provisions of this Constitution on Parliament.”

The first amendment is a purely verbal one, in that it introduces a change in the phraseology so as to be more in conformity with constitutional language. I feel it is better to say “*until such time as both Houses are summoned*” instead of saying “until”. However, I leave that to the collective wisdom of the Drafting Committee to deal with at the proper stage.

With regard to amendment No. 143, this is partly substantial and partly verbal. I fail to see why this Assembly should be described in this cumbersome fashion—“the body functioning as the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution.....” The draft of this article as it originally stood was much simpler. In regard to the words “the Constituent Assembly of the Dominion of India”, I feel that even here the word “Dominion” could be usefully and rightly omitted. If my honourable Colleagues in this House would turn for a moment to the cover of this book—The Draft Constitution—they will see that the Assembly is described as the “Constituent Assembly of India” and not of the “Dominion of India” I do not know why some honourable Members are fond of using this word ‘Dominion’ in season and out of season. Where it is of course necessary in legislation it may be used. I have no quarrel with that. Where it can be omitted without detriment to the meaning of a clause or article, I fail to see why we should go on harping on this word Dominion, Dominion, Dominion. The Constituent Assembly, really speaking is that of a free country. Unfortunately or accidentally, circumstances have so conspired in our country that we had to convene a Constituent Assembly before India became completely free. Historically speaking it is only when a country has shaken itself free of foreign yoke that a Constituent Assembly is convened. We have ourselves in the rules made in this House—rules of procedure and standing orders—referred to the Constituent Assembly of India, and the very first rule says : “In these rules, unless the context otherwise requires, the Assembly means the Constituent

[Shri H. V. Kamath]

Assembly of *India*". So there is no justification or necessity for using the word "dominion" in this context and it may be very reasonably and wisely dropped entirely without detriment to the meaning that the clause is intended to convey.

Then, Sir, the next objection is to the cumbrous verbiage that appears in this clause: "body functioning as the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution". I do not know why this has been introduced, changing the draft as it stood originally. If my honourable Colleagues turn to article 311, clause (1) as it stood originally, they will see that its description is "the Constituent Assembly of the Dominion of India". I have already stated that the word 'Dominion' should be dropped. Now, I say that this could be more simply described as the Constituent Assembly of India. If the Drafting Committee feels that just because a little more than a hundred seats are going to be declared vacant, this change in the description of the body is necessary, I feel that they are labouring under a misapprehension. So long as the body is not dissolved, it continues to be the Constituent Assembly of India. Even if a very large majority of the members resign from the Assembly and whether their places are filled up or not, it is the same old Assembly which has always been called the Constituent Assembly of India. So long as it is not dissolved, it continues to be called in constitutional parlance the Constituent Assembly of India. Therefore, if there is any misapprehension that on the score of the resignation of more than one hundred members, this body must be described in this fashion and not simply as the Constituent Assembly of India, that misapprehension is not at all justified, and we will not be describing the body wrongly if we refer to it merely as the Constituent Assembly of India. Whether a hundred members resign or even more do so, until the commencement of the Constitution, the body continues to be called the Constituent Assembly of India. Therefore by means of amendments 143, 144, and 145 which go together, I seek to simplify the wording and the expression employed in this article in clause (1), so that we will provide for the Constituent Assembly of India itself exercising all the powers and performing all the duties conferred by the provisions of this Constitution on Parliament. Once the Constitution comes into force, then, of course, under the Constitution, this Assembly will be called the provisional Parliament. Till then, it is not necessary to say "the body functioning as such and such". It is enough for our purposes to say "the Constituent Assembly of India". I hope those members of the Drafting Committee who are fond of using the word "dominion". and of using more words than are necessary for our purpose, will see the force of these amendments of mine and simplify the wording of this clause.

Now, I come to clause (2). I do not propose to move amendment No. 147. I shall move only amendment 148:

"That in amendment No. 9 of List I (Second Week), in clause (2) of the proposed article 311, after the word 'rules' the words 'which shall, as far as practicable, conform to those adopted by the Constituent Assembly' be inserted."

Clause (2) refers to certain rules which the President may make for representation in this provisional Parliament, that is to say, when this Assembly is converted into or reconstituted into our provisional Parliament. This clause provides for the representation in the provisional Parliament, of those States or other territories of India so far not represented. The House is aware that the representative from Bhopal has not yet taken his seat in this Assembly though the firman has gone forth that he should come here as soon as possible. We hope that he or she will be with us during the Third Reading of the Constitution. Hyderabad is still not represented. We do not know whether the steps that have far been taken will fructify so as to enable us to welcome

our friends from Hyderabad in this Assembly during the Third Reading. Of course, when this Assembly resolves itself or converts itself into the provisional Parliament, I am sure, the President by Rules will provide for the representation of Hyderabad also in this Assembly. So also, there is the Union of States called Vindhya Pradesh; still unrepresented in this Assembly. During the last session, you, Sir, were good enough to tell us that the Rajpramukh of Vindhya Pradesh and his Chief Minister or Regional Commissioner have been asked by the Secretariat of the Constituent Assembly to take necessary steps for the proper representation of Vindhya Pradesh in this Assembly. I do not know what progress that course of action has made so far as Vindhya Pradesh is concerned. We hope that they will be with us during the next session, the final session of this Assembly. At any rate, I am sure that they will take their places here when the provisional Parliament meets next year. So far, Sir, as regards the States not represented.

Now, this clause (2) provides for rule-making by the President. The House is very well aware that this Assembly has adopted certain rules with regard to the representation of States and other Units in this Assembly. I refer to rule 51 of the Rules of this Assembly which we have adopted, I believe, some time last year. Under Rule 51, we have also adopted a Schedule. That Schedule provides or lays down certain rules in regard to representation of States in this Assembly. My amendment No. 148 refers to the rules made by us and incorporated in this little booklet which has been supplied to all Members by the Secretariat,—the Rules of Procedure and Standing Orders. There are certain rules which have been made, as I said, for the representation of States in this Assembly. My amendment seeks to lay down that as far as possible, as far as practicable, the President's rules shall conform to the rules that this Assembly has already adopted during the last year. It may be, certain circumstances may arise in certain States which may stand in the way of the President conforming to the rules already adopted. 'That is why I have introduced the phrase 'as far as practicable!' I hope the Dr. Ambedkar the Drafting Committee and my honourable Colleagues in this House will see their way to accept this amendment because, after all, it pertains to a matter which has already been decided by the House, and I see no reason why, where it is practicable, the President should depart from the Rules which this Assembly has already adopted.

I now come to No. 155 which is more or less a verbal amendment. I think the Drafting Committee has slightly overlooked this part of the subject. In clause (3) reference is made to a Governor's province or in Indian State. The House is aware that we have not merely Indian States but also what are called Union of States. I seek by this amendment of mine to introduce this phrase also so that it would read as follows:—

“Legislature of a Governor's province or Indian State or Union of States.”

Madhyabharat and Rajasthan are Unions of States, not merely Indian States. I feel that to be quite correct we must have in addition to 'Indian State' this phrase also 'the Union of States' as well.

Then as regards the draft which reached us this morning of this clause (3) I had no time to send in amendments, but I would like to draw attention of the Drafting Committee and the House to the point I raised the day before yesterday in connection with the description of Ministers. In an article which we adopted two days ago Ministers were referred to as Ministers for the Dominion of India. I thought it was an inaccurate and incorrect expression and following that very argument I feel it would be more correct to describe the Minister here as 'Minister of any Indian State' not 'for Indian State

[Shri H. V. Kamath]

Lastly, in the same clause I would suggest a very minor verbal amendment in the last but one line. The draft reads thus—

“Unless he has ceased to be a member of that Assembly.”

I think it would be sufficient to say ‘the Assembly’ instead of ‘that Assembly’. That is purely verbal, and I leave it to the good sense of the Drafting Committee.

Then I come to the last amendments 161 and 162. If these were to be accepted by the House, clause (4) will read as follows:—

Any person holding office immediately before the commencement of this Constitution as Speaker of the Constituent Assembly when functioning as Dominion Legislature under the Government of India Act, 1935, shall continue to be the Speaker of the Provisional Parliament functioning under clause (3) of this article.”

I seek to delete the reference to Deputy Speaker. I hope, Sir, that it will not be taken in a personal light or as a personal reflection upon any member of this House. The other day when Dr. Ambedkar introduced new articles with regard to the State Legislatures, one of the clauses of those articles referred to only the Speaker of the Legislature. In that connection I had occasion to point out the omission of the Deputy Speaker. That article referred to merely the Speaker of the Assembly and the Chairman of the Upper House. I then pointed out the absence of any reference to Deputy Speaker of the Lower House and the Deputy Chairman of the Upper House though they are definitely mentioned in the Constitution in the Chapter relating to the State Legislature. Apart from that, even today in several provinces we have got a Deputy Speaker. That is why I sought to insert a reference to Deputy Speaker as well, but Dr. Ambedkar, perched on his high pedestal or in his ivory tower or perhaps because he had a closed mind on the subject—I do not know why—Dr. Ambedkar did not care even to reply to the point raised. But today I find that he has accepted the point raised by me and on the principle of better late than never, I would have gladly agreed to that but the difficulty today is that you have already passed an article two days ago where so far as the interim State Legislatures are concerned only the Speaker is mentioned but not the Deputy Speaker, and to-day an article regarding Parliament comes up and we have reference there in to both the Speaker and Deputy Speaker. If Dr. Ambedkar and the Drafting Committee undertake to revise the article regarding the transitional State Legislatures so as to mention the Deputy Speaker as well and for the continuance of the Deputy Speaker and the Deputy Chairman for the transitional period, then of course consistency demands that this article also should be passed as it is. But, Dr. Ambedkar is not always very particular about consistency, and he may say that so far as Parliament is concerned he would like to have the Deputy Speaker mentioned because perhaps he is one of us. But so far as the State Legislature is concerned, ‘out of sight out of mind’ on that basis he may not be very particular about mentioning the Deputy Speaker of the State Legislature. Any how let us, as far as possible be consistent in whatever we do. If we have Deputy Speaker mentioned here let us mention him in the State Legislature as well and if we do not do so then delete him from this article also. Let us for God’s sake, or at least for this House’s sake—let us be consistent in these little things. We may not be, so in the bigger things of life. There is no difficulty in being consistent so far as little things are concerned, and therefore I hope that these amendments of mine will commend themselves to the House including Dr. Ambedkar.

The Assembly then adjourned till Ten of the clock on Tuesday, the 11th October 1949.

CONSTITUENT ASSEMBLY OF INDIA

Tuesday, the 11th October 1949

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.

CONDOLENCE ON THE DEATH OF MR. AZIZ AHMAD KHAN

Mr. President : It is with great regret that I have to mention to the House the death of one of our Members—Mr. Aziz Ahmad Khan, of Bareilly. He was a Member of the U.P. Legislative Assembly for a long time, and then he came to this House. He had been ailing for some time and he expired a few days ago. Honourable Members will show their respect to his memory by rising in their places and permit me to convey to his family our deep sympathy.

(The Members stood up in silence.)

DRAFT CONSTITUTION—(Contd.)

Article 311—(Contd.)

Mr. President : We shall now proceed with the consideration of the article which we were considering yesterday—article 311. Mr. Naziruddin Ahmad can move his amendment No. 146.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, I wish to move my amendment No. 146:

“That in amendment No. 9 of List I (Second Week), in the Explanation to clause (1) of the proposed article 311,—

- (i) for the words ‘the Constituent Assembly’ the words ‘membership of the Constituent Assembly’ be substituted;
- (ii) for the word ‘includes’ the words ‘shall include’ be substituted.”

With regard to my first amendment, it seems to be necessary on a Consideration of the context. The expression occurs in the Explanation. The Explanation says that “For the purpose of this clause, the Constituent Assembly of the Dominion of India includes the members from the States” and other things. The objection to which the context is open to is this. It is said that the “Constituent Assembly” includes certain “Members”. I think that a Constituent Assembly is an abstract term. It is a mere legal conception. The Constituent Assembly cannot include Members, but rather the “membership to the Constituent Assembly” shall consist of members. I will leave the matter to the Drafting Committee for consideration.

With regard to the second part of the amendment, it is also of a drafting nature, and consequential upon the first.

Speaking generally on the article, I agree with Mr. Kamath that the simple term “Constituent Assembly” has been expressed in a very verbose and round about manner, namely, “the body functioning as the Constituent Assembly of the Dominion of India immediately preceding before the commencement of this Constitution”. For this long expression, the mere term “Constituent Assembly” would have been enough. That is a well-defined and well understood expression and was brought into being by the Independence of India

[Mr. Naziruddin Ahmad]

Act, and did not require further amplifications. But I do not quite agree with Mr. Kamath when he says that this provision is totally unnecessary. There is a provision in the Independence of India Act which says that the powers laid down under the Government of India Act as modified, shall be exercised by the Constituent Assembly, apart from its duty of framing the Constitution. That power is confined to carrying on all the duties under the Government of India Act as adapted by the Governor-General. But this article 311 empowers the Constituent Assembly to carry on the powers "under this Constitution" as distinguished from being under the Government of India Act as so adapted. The Government of India Act and this Constitution are essentially different Acts, and an article like this is absolutely necessary in order to enable the present Constituent Assembly to function and do the work under "this Constitution" until the new Houses of Parliament are duly constituted after a general election.

There is the other amendment of mine, the one relating to clause (3). That is No. 158.

"That in amendment No. 9 of List I (Second Week), in clause (3) of the proposed article 311, the words 'within the meaning of the Rules of Procedure and Standing Orders of the Constituent Assembly' be added at the end."

This also seems to be necessary under the altered circumstances in which we would be placed after the Constitution is passed. Clause (3) says that those who were members of the Provincial Assemblies as well as of the Constituent Assembly shall cease to be members of the Constituent Assembly. And what is important, every such vacancy shall be deemed to be a casual vacancy. This expression—casual vacancy—has not been defined anywhere in this Constitution. The only reference to casual vacancy appears in the Rules of Procedure and Standing Orders of the Constituent Assembly—Rule 5, sub-rule (1). So far as the Rules of Business and Procedure and Conduct of Business in the Legislative side of the Constituent Assembly is concerned, so far as I can see, there is nothing like casual vacancy mentioned in those rules. They are mentioned, I believe, exclusively in our rules of the Constitution, section. If we say that they should be regarded as casual vacancies, we should really explain the expression 'Casual vacancy' with reference to the rules. Otherwise it will be difficult to find out what the casual vacancy means. We have nothing like it in the Constitution which we have passed so far, and immediately after the Constitution is passed, on the 26th January at any rate, this House sitting as the Constituent Assembly in the "Constitution" section will cease to exist. I fear that the Rules of Procedure and Standing Orders of the "Constitution" section would then be inoperative and will not be applicable at all. So, the expression 'casual vacancy' will remain absolutely unrelated to any enactment or rule. With regard to casual vacancies which may occur after the general election it seems to me that they will be covered by rules framed under the Constitution; but at present there is nothing like this expression anywhere except in our present Rules. I should think that it should be made clear that it is a 'casual vacancy within the meaning of our present rules'. That would save from natural death. Our Rule 5 which alone would seem to be applicable in the circumstances of the case.

With regard to the Rules under the Constituent section and the Legislation section, there will be a clash as to which rule will apply. It would be far better to clearly specify the enactment or the rule within the meaning of which the words 'casual vacancies' will come. This amendment is of a drafting nature and may be considered by the Drafting Committee.

Shri V. I. Muniswamy Pillay (Madras: General) : Mr. President, Sir, I move :

“That in amendment No. 9 of List I (Second Week), in sub-clause (a) of clause (2) of the proposed article 311, for the words ‘of any State or other territory’ the words ‘of a Governor’s Province or Indian State’ be substituted.”

“That in amendment No. 9 of List I (Second Week), in sub-clause (a) of clause (2) of the proposed article 311, for the words ‘not represented’ the words ‘not adequately represented’ be substituted.”

“That in amendment No. 9 of List I (Second Week), in sub-clause (a) of clause (2) of the proposed article 311, after the words ‘commencement of this Constitution’ the words ‘having due regard to the proper representation of the Scheduled Castes’ be inserted.”

“That in amendment No. 9 of List I (Second Week), in clause (2) of the proposed article 311, the following new sub-clause be inserted:—

‘(d) the election of a Speaker or Deputy Speaker for the Parliament’.”

Sir, when this article was introduced in this House by my honourable Friend, Dr. Ambedkar, he told the House that it dealt with double membership. Sir, on a perusal of the article I find that there are many other things therein which required the attention of this House and also of the President who will be the ultimate authority in deciding who ought to be the members that are to be chosen from the States or other territories to take part in the provisional Parliament. Also, in the explanation it is clearly stated in clause (2) that with regard to filling casual vacancies in the said Assembly, the President shall have power to make rules for the representation in the provincial Parliament functioning under clause (1).

Here I would bring to the notice of the House the grave injustice that has been done to a section of the community in India, viz., the Scheduled Castes. Sir, according to the Statistics of Population that has been prepared and furnished to us, out of a population of 330 millions, the Scheduled Castes number about 50 millions in India. The total membership of the provisional Parliament has been accepted is 320. Out of this, the quota for the Scheduled Castes must be about 55 to 60. If this is so, the provisional Parliament must have at least 55 members of the Scheduled Castes. I do not find that it has been made clear in this explanation No. 2, whether the Scheduled Castes would have that much representation. It is with that object I have suggested in one of these amendments that the future authorities or President who will make rules for the representation of the various communities in the provisional Parliament should give due representation to the Scheduled Castes.

Sir, after the Constituent Assembly started functioning, several Indian States and other territories have been brought under the purview of the Constituent Assembly for the purpose of representation. But, from a casual observation whether Scheduled Caste members had been chosen from those States we find that not a single member of the Scheduled Castes has been returned to the Constituent Assembly, except one from the State of Mysore. This I think is a very vital point in this article that requires the attention of the President and also the Members of this Constituent Assembly.

As far as the future Central Assembly and the provincial assemblies are concerned, we have already passed certain articles providing for the representation of the Scheduled Castes on the population basis. But I do not find any such formula for the representation of the Scheduled Castes in the provisional Parliament that will be set up after 26th January 1950 when this body ceases to function.

The other amendment of mine, No. 152 seeks to provide that the matters concerning the selection of the Speaker or the Deputy Speaker may be left to

[Shri V. I. Muniswamy Pillay]

be decided by rules to be made by the President who will be functioning after 26th January 1950. The reason why I have moved this amendment is that in an earlier article we have provided for the Speakers of the Assemblies and the Presidents of the Legislative Councils, wherever there will be double chambers, to come into office just after the commencement of the Constitution. We have not said anything there about the Deputy Speakers or Deputy Presidents where they continue in office after 26th January 1950. So I feel that even the matter of election of the Speaker or Deputy Speaker for the provisional Parliament must be left in the hands of the President so that those elections may be regularised.

The other amendment that I have moved, No. 156, I find will not fit in with the new amendment No. 195 introduced by the Honourable Dr. B. R. Ambedkar yesterday. But I would like to move my amendment to amendment No. 195, paragraph (3) as follows:

“A member in two assemblies shall resign his membership in the legislature of a Governor’s Province or an Indian State thirty days prior to this Constitution coming into effect.”

Dr. Ambedkar argued yesterday that this article deals with double membership. Due to circumstances, though the Constituent Assembly came into existence for constitution-making, it has been decided that the Constituent Assembly can function as a legislative body also, but due to a convention, Sir, it was possible for members who are also members of provincial legislatures to stay back and take part in their own legislatures; thereby those members as a matter of fact were not functioning as members of the Central Legislature. It may be that at present both these functions are done by this body, but my view is that when this Constituent Assembly changes itself into the provisional Parliament, all members of the provincial legislatures who have been returned to this House also should be told that they cannot take part.

Further, Sir, if you accept this article, it does not give to members discretion either to choose functioning in the provisional Parliament or in their own Legislatures. We have already passed an article whereby this Constitution states in unequivocal terms that a member cannot be a member in the Central as well as the provincial legislature. So, I feel strongly that this matter must be left to the choice of the Members themselves, and I know that members having a sense of responsibility, will not choose to sit in both Houses. There are Members who have been chosen for this Constituent Assembly who are able jurists and who have special knowledge of matters connected with the administration of this country. There may be many Members who may find it necessary to be in the provisional Parliament. We do not know how long this provisional Parliament will function.

Secondly, Sir, as far as the matter of reservation for the Harijans was concerned, it was said that it would continue for ten years from the commencement of the Constitution. We do not know for how long this provisional Parliament will function. It has not been made clear in this article whether the reservation would start from the 26th January 1950 or from the commencement of this Constitution in right earnest after two or three years. Now, nobody knows whether the life of this provisional Parliament will be two years or ten years according to circumstances. So, I feel honestly that this matter of deciding whether a Member likes to function in the Central Assembly or in the Provincial Assembly should be left to the Member concerned. With

these few words, Sir, I am hopeful that the Drafting Committee will consider what I have said about these Amendments and do the necessary things so that Members may have discretion in deciding where they should work.

Mr. President : You are not moving amendment No. 150?

Shri V. 1. Muniswamy Pillay : I have already moved it, Sir.

Shri H. V. Pataskar (Bombay: General): Mr. President, Sir, I rise to move amendments Nos. 153 and 157 which stand in my name. I move:

“That in amendment No. 9 of List I (Second Week), in clause (3) of the proposed article 311, for the words and figure ‘sixth day of October 1949’ the words ‘date of commencement of this Constitution’ be substituted.”

“That in amendment No. 9 of List I (Second Week), in clause (3) of the proposed article 311, for the words beginning with ‘ as from the date of commencement’ and ending ‘casual vacancy’, the following be substituted:

‘at the expiration of one month from the date of the commencement of this Constitution, that member’s seat in the legislature of a former Governor’s Province or an Indian State shall become vacant unless he has previously resigned his seat in the Constituent Assembly’.”

Now, so far as my amendment No. 157 is concerned, I have carefully looked into the matter and it can fit in also with the improved clause (3) as it is now moved by the Honourable Dr. Ambedkar. Sir, there is a vague impression that some how or other this double membership which have been a feature of this Constituent Assembly is a thing which ought to be dispensed with at the earliest possible moment, and I have no doubt that in no constitution of the world will you find double membership of this type. There is a usual provision in all Constitutions that if a person happens to be elected to both the legislatures, the higher and the lower one, or the Central and the provincial one, then the option is left to the member whether he will sit in the Central or the provincial legislature; and if he does not exercise his option, then that individual loses his seat in the Lower House and not in the Upper House. On that principle was based the present clause (2) of Section 68 of the Government of India Act of 1935.

Sir, there is a history to this double membership and I shall only take a short time of this House in telling them as to how it occurred. When our Constituent Assembly was first elected, there was a Central Legislature functioning under the old Act in this country. Naturally at that time the only purpose that Members of the Constituent Assembly were expected to fulfill was that of framing the Constitution, but they were elected on a definite basis, viz., that there was to be one representative for every ten lakhs of people. Compared with that, the Central Assembly that existed then was a less representative body, as it was elected under the old Act and even consisted of nominated members. Therefore, Sir, naturally the two bodies were expected to work in the beginning separately, but things moved very fast in the political field in the country and the British decided to partition the country and quit. Power had to be transferred to some authority. Naturally the old Central Assembly was found as compared with this Constituent Assembly, to be not as representative as this body was. At that time, the most representative body in the country was this Constituent Assembly. Therefore it was decided that power should be transferred to this Constituent Assembly, and then the Independence Act was passed. The Indian Independence Act made provision that while continuing their work of framing a Constitution for the country, this body should also function as a legislative body, and provision for this was made in Section 8 of the Independence Act. Section 8, clause (1) says:

“In the case of each of the new Dominions, the powers of the Legislature of the Dominion shall, for the purpose of making provision as to the Constitution of the Dominion, be exercisable

[Shri H. V. Pataskar]

in the first instance by the Constituent Assembly of that Dominion, and references in this Act to the Legislature of the Dominion shall be construed accordingly.”

Then we have a further provision in sub-clause (e) of clause (2). Sub-clause (e) of clause 2 of Section 8 of the Indian Independence Act says:

“The powers of the Federal Legislature or Indian Legislature under that Act (that is the Government of India Act, 1935) as in force in relation to each Dominion, shall, in the first instance, be exercisable by the Constituent Assembly of the Dominion in addition to the powers exercisable by that Assembly under sub-section (1) of this section.”

It was under these circumstances that the Constituent Assembly came to be a body, not only for framing the Constitution but also to serve the purpose of the Federal or Central Legislature. Our own Government thought that it was necessary, and therefore they passed the Provisional Constitution Order by which sub-clause (2) of section 68 of the Government of India Act was deleted, because if it existed, then naturally double membership could not have continued we would have been required to exercise any option and if we had not exercised that option we would have continued to be members of the Central legislature and we would have lost our seats in the provincial legislature. It was thought then that in the interest of the administration both at the Centre and in the provinces it was not desirable that members of the provincial legislature should take part here in the work of the Central Assembly at the cost of their work which they had primarily to do as members of the provincial Assembly. Hence our leader issued a sort of letter of convention by which members of the provincial legislatures were asked not to take part ordinarily in the working of the Central legislature and I must say, so far as I know (I do not hold any office in the Constituent Assembly) that letter of convention has been to a very large extent adhered to by members of the provincial legislatures, because they were all expected to be responsible people and I think they have acted in that manner.

While framing the constitution we passed article 82 and clause I (a) of that article reads:

“(1a) No person shall be a member both of Parliament and of the Legislature of a State for the time being specified in Part I or Part III of the First Schedule and if a person is chosen a member both of Parliament and of the Legislature of such a State then at the expiration of such period as may be specified in rules made by the President that person’s seat in Parliament shall become vacant, unless he has previously resigned his seat in the Legislature of the State.”

It is important to, note here that clause (1a) of article 82 closely follows clause (2) of the original section 68 in the Government of India Act, 1935 with this difference that while in the case of the provision contained in clause (2) of Section 68 if a person who happened to be elected to both Houses of Parliament did not exercise his option within the time decided by the Governor-General, as it was intended under, that Act, then he would automatically lose his seat in the lower House, whereas in article 82 (1a) somehow or other, for reasons best known to the Drafting Committee, they have chosen to follow a course different from the one which is usually followed, namely, that the member would automatically lose his seat in the Lower House and not in the Upper House. To me this is an abnormality: however we have already passed that article and I would not take up the time of the House over it and it is not proper to do it at this stage.

After having passed this article I fail to understand why there is any necessity for introducing an article of this nature, because under article 82 (1a) already passed as soon as the Constitution comes into force the Members who are members of the provincial legislature would automatically cease to be Members of this House. Of course he is given the option but if he does not exercise the option he loses his seat in the Constituent Assembly..... (*Interruption by the*

Honourable Shri K. Santhanam) Shri Santhanam interrupting says that article 82 would not come into force with the commencement of the Constitution. If the Constitution comes into force on the 26th January, I do not understand why this provision should not come into force then. If it is thought that it would not come into force I would submit that in any case it is not desirable that there should have been a provision like this made in the Constitution itself for the interim period. On account of circumstances which I have already described this House came to be a body which had some members who were members of the provincial legislatures also and if it was once thought that the best interests of the country and the provinces would be served by issuing a letter of convention I do not understand why it is necessary at this stage, for the sake of one year (which is what is left before the next elections), to make an abnormal provision of this nature in the Constitution. If it is thought that instead of having such a letter of convention it is desirable once for all to solve this question even for this short period the best course would have been to treat these gentlemen in a manner better than what is being done now and to give them the option, which would not have made much difference. Because I want to make it clear that most of the Member of this House were elected on the Congress ticket and if option is given to them it means not an individual decision of an individual Member but it means an exercise of option by the Congress Party itself. All the same the very same result could have been achieved. Such an option would have literally and virtually meant an option given to the Congress Party and up to this time they have acted according to the party decision.

Under the circumstances I fail to see why when we have been carrying on well all this time, during the transitory period they should have thought it fit to bring forward a special provision for a short period of one year. The provision has a sting in it, for a Member shall have no option to resign from either body after the 6th October. It shows that there is a suspicion regarding many of the Members of this House. We have been carrying on our work for a long time on account of circumstances beyond our control and there is an impression in the press and outside the House that we have been carrying on so long because we want to earn Rs. 45 per day. There have been so many newspaper cartoons and other references. In the circumstances this provision would give the impression that those who are also members of the provincial legislature would prefer rather to be here and earn Rs. 45 per day than observe the rules of the party or serve the best interests of the country, which is very very uncharitable.

So, I fail to understand why this should have been mentioned here at all This provision should be deleted. There are many ways by which the same result could be achieved and they should be charitable to the members of the provincial legislatures, to say the least. I therefore oppose the provision, as there is no necessity for a provision of this nature. My amendment No. 157 means that the option should be given to the members to resign. I know the manner of exercising this option is inconsistent with article 82 (1a) which we have already passed. But it is consistent with the Government of India Act. 1935, and with the principles which are followed all over the world. You take any constitution in the world You Will find a provision that wherever a person happens to be an elected member of a higher and a Lower House if he does not exercise his option, then he automatically loses his seat in the Lower House and not the Upper House. It is on that principle that I have based this amendment of mine. There are ways and ways of achieving object we have in view.

My first submission is that the present arrangements should be carried on for one year more. In 1950-51 the elections are coming. It is therefore only a matter of one year. We have pulled on for so long and there is no reason why we cannot continue to do so for a year more. Even if it is not so, I think an option

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should be given to the Member. And an Option to a Member in this case means in a large measure option to the Congress Party, though there might be some who do not belong to this party. I do not think heavens are going to fall if this is not done. I regard this provision as a slur on the members of the provincial Assembly who happen to be returned here and to be double members, not because of their choice but because of circumstances beyond their control. That is why I resent this provision, particularly that we should be treated in this manner when we are reaching the end of our deliberations and that a provision should be made in the Constitution which suggests as if these people are likely for some ulterior reasons to persist in continuing here to the detriment of the administrations to which they primarily belong. It is for this reason I move my amendment. I hope honourable Members of the House will seriously take into consideration what I have said.

Shri Brajeshwar Prasad (Bihar: General) : Mr. President, Sir, I beg to move:

“That in amendment 9 of List I (Second Week), in clause (3) of the proposed article 311, for the words ‘a House’ the words ‘the lower House’ be substituted”.

I also move:

“That in amendment 9 of List I (Second Week), after clause (3) of the proposed article 311, the following new clause be inserted:—

‘(3a) If a member of the Constituent Assembly of the Dominion of India was on the twenty-sixth day of January, 1950, also a nominated member of the Legislative Council of a Governor’s Province, then, as from the date of commencement of this Constitution that person’s seat in the said Assembly shall, unless he has ceased to be a member there of earlier, become vacant and every such vacancy shall be deemed to be a casual vacancy.’ ”

Sir, the whole idea is to obviate the necessity of by elections for more than hundred seats in the Constituent Assembly. If the Members are given the option to continue in the Constituent Assembly the result will be that many seats will fall vacant and a general by-election for more than a hundred seats will have to be conducted. I have got my own opinion as to how far that course is desirable. But at present in amendment No. 160 I am only suggesting that members of the Legislative Council should have the option: they should choose whether they want to sit here or in the Provincial Legislative Council. If they choose to remain here there will be no by-elections because they are nominated members. In the Provincial Legislative Councils the Congress Party has a majority everywhere and it will not be difficult for the Government to nominate any member whom they like. I cannot see any reason why this House and especially members of the Drafting Committee will not find it possible to accept this amendment of mine.

I have got nothing more to say as far as this amendment is concerned. But with your permission I would like to say a few general words on the articles that have been moved. I hold the opinion that Members of the House should have the option to remain here or to remain in the Provincial Assemblies. If there is no difficulty in having a general election in West Bengal. I do not see any reason why there should not be general by-elections for hundred seats more. I hold the opinion that events as they are shaping themselves will compel us to postpone the general elections under this Constitution for an indefinite period. Our relations with the Government of Pakistan, especially with reference to Kashmir, are deteriorating fast, and I hold the opinion that this transitional Parliament will continue for more than five or six years. After that period, whether it will be possible to implement the provisions of this Constitution, whether this Constitution will ever come into operation or not I am not clear in my own

mind. Personally I am inclined to hold the view that the provisions of this Constitution, barring the transitional provisions, will never come into operation. With that background I feel that it will be beneficial if we hold general by-elections for these hundred seats, because to continue a House without going to the electorate for more than six or seven years is not desirable. There is already a growing discontent in this country that we want to continue. We want to take a snap-vote; we want to know whether we have the confidence of the electorate or not. Therefore it is desirable that a general by-election should be conducted in this country.

If my belief is correct that there is not going to be a general election under the Constitution it will be a violation of the letter and the spirit of the Constitution to provide reservation of seats for any community in this country except Harijans and the Adibasis. Therefore I oppose draft article 312 F. It provides reservation of seats for all kinds of communities. In the Constitution we have made provision for reservation of seats for the Harijans and the Adibasis. With that provision I heartily concur, but for other communities there should not be any reservation because other communities must assimilate with the rest of the people of this country. If I had the slightest doubt in my mind that there will be general elections in the year 1950 or 1951, I would not have suggested the course which I am suggesting. But I am quite convinced in my own mind that there cannot be any general election during 1950 or 1951. Therefore why should we continue the legacy of the past? Why should we give reservation of seats to other communities?

Prof. Shibban Lal Saksena (United Provinces: General) : Mr. President, Sir, I beg to move:

“That in amendment No. 9 of List I (Second Week), in clause (2) of the proposed article 311, for the words ‘President may by rules’ the words ‘Parliament may by law’ be substituted; and clause (4) of that article be deleted.”

In this article we are providing for the Provisional Parliament and it is contemplated that this very Assembly should become the Parliament minus the Members who are also members of the various Provincial and State Assemblies. In this article in clause (2) provision is made for representation in the Federal Parliament, of States which are not at present represented in it. The only State that is not represented now is Hyderabad, so what is intended by clause (2) is that the President is given power to provide by rules representation for Hyderabad. Personally, I think that we will have the representatives of Hyderabad present here before this, Assembly dissolves. I have no objection whatsoever to representation being granted under rules but this Parliament should have the opportunity to discuss the representation which is given to Hyderabad. What is attempted by this clause is that whosoever is chosen to represent that State according to the rules made by the President, this Parliament will not have the power to discuss those rules. This I think is not proper. As a sovereign Parliament it should have the power to discuss who is being allowed to become its Member, who represents a particular territory and whether the rules made are what Parliament could approve of. I therefore think that it is not very happy that the President should be permitted by rules to provide for this representation and that this House should have no say whatsoever in the manner the rules are framed.

Then, who is this President ? It is said in article 312 F which has not yet come up before the House but which is there before us that until 26th January, for you Sir, shall be the President and you are given the right to frame rules for securing the representation. After that the President of the Republic shall be empowered to do it, which means the Cabinet. I think that this House should have the power in both the cases of discussing the rules. When we framed rules for representation of Kashmir, this House had an opportunity of discussing those

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rules. The House has the right to have its say. But by this clause, by saying that the President shall do it by rules, you are depriving the Parliament of that right which is not proper and is wholly undemocratic. I do demand that whatever is decided about Hyderabad and in whatever way it is given representation, this Parliament should be the final authority as regards the rules under which they come to this House.

The second part of my amendment is that clause (4) be deleted. In article 311A we have said that this Constituent Assembly shall elect a President. Why, then, should it not elect a Speaker also? I see no reason for making a difference. I am sure the same President and the same Speaker will be re-elected by this House, but still it would have been far more democratic if we had said that this House shall re-elect them. If we have agreed to elect the President. Why should we not elect the Speaker? There should be no difference between the Speaker and the President; although the Personalities chosen may be the same as heretofore—as we ourselves will elect them there is no reason why they should be different—still I do feel that any differentiation as between the President and the Speaker in this matter is not proper. It is a sort of a discrimination that the House shall re-elect the President and not the Speaker. The House shall re-elect the President as well as the Speaker. The Constitution must have the same provision for both of them. That is logically necessary.

Some friends have spoken about the provisions of clause (3). That clause has been objected to, saying, that choice should be given to Members who are also members of provincial legislatures to choose whether they would prefer to be members of Parliament or the Provincial Assembly. I agree with that point of view. This Parliament should become the Parliament of the future as it is and the vacancies should not be created in this House but the seats of such Members should have been declared vacant in the Provincial Assemblies and the people should have been required to re-elect Members in their places. One hundred seats in the whole country is not a large number and those re-elections would also have shown whether the country was with the Congress or not. Also it would have been a more democratic way of doing things. It would have given some indication of how the public feels. Though I have not tabled an amendment, I am in sympathy with those friends who think that this House should have remained as it is and the vacancies caused by those Members who have membership in the Provinces should have been filled by direct election.

Sir, I also support some of the amendments made by My Friend Mr. Kamath to clause (1). The wording chosen by him is better. I think these amendments should be considered by the Drafting Committee and incorporated to make the draft more concise and better.

Shri Mahavir Tyagi (United Provinces: General): Sir, have I your permission to discuss generally the whole article ?

Mr. President : You may first move your amendments

Shri Mahavir Tyagi : I beg to move:

“That in amendment No. 9 of List I (Second Week), in clause (1) of the proposed article 311, the following be added at the end:—

‘and shall be known as the Parliament of the Union of India.’ ”

I have other amendments, but now since Dr. Ambedkar has come out with his fresh amendments which cover many of my amendments, I do not intend to move the rest of my amendments.

In moving this amendment I have just one remark to make. Article 311 as proposed starts with the heading, "Provisions as to Provisional Parliament of the Union and the Speaker and the Deputy Speaker thereof." The words "Provisional Parliament" have been used for the first time in the heading alone. There is nothing in the body of the article to say as to what would be the provisional Parliament. Somewhere in the body of the article we should say that there shall be a provisional Parliament but this has not been stated. Only in the latest amendment of Dr. Ambedkar it is mentioned that after these casual vacancies are filled there will be a provisional Parliament. He has named it "Provisional Parliament" only casually. Therefore, in order to clarify this I wish to add in the very first clause the words—

"and it shall be known as the Parliament of the Union of India."

In this first clause he says—

"Until both Houses of Parliament have been duly constituted, and summoned to meet for the first session under the provisions of this Constitution, the body functioning as the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution shall exercise all the powers and perform all the duties conferred by the provisions of this Constitution on Parliament."

From this I construe the meaning that the Constituent Assembly of the Dominion of India will continue and that that body will carry out all the functions of the provisional Parliament. What a provisional Parliament is, has not been defined anywhere. I therefore submit that we may add, "and shall be known as the Parliament of the Union of India." I do not agree with the use of the word 'Provisional' either in the case of the Parliament or in the case of its officers or President or others. It must be "Parliament". With these remarks, I hope this amendment will be accepted.

Sir, speaking generally on the article, I am really sorry that Dr. Ambedkar and the Drafting Committee had to come out with this proposal. I should have preferred a general election. The proposal to continue this Constituent Assembly and also to suggest that this Assembly shall function as the first Parliament is, to my mind, not very democratic. It would have been much better if we could have a direct election immediately before the commencement of the Constitution. We should have commenced with a new Parliament freshly elected through the general election. That would have been the proper course.

Shri L. Krishnaswami Bharathi (Madras: General): Under what franchise?

Shri Mahavir Tyagi : That would have been the proper course, because then, the Parliament would be in a position to know the trend of public thought and the people in power would be vested with the fullest confidence of the people when they would represent. Now, Sir, as it happens, we have come here through an indirect electorate, the legislative Assemblies of the Provinces, which were elected long ago in 1946 or so. It is long since we approached the electorate. From that point of view, this article, in my opinion, is the most reactionary type of an article that we are passing.

It seems there are difficulties in getting the electoral rolls ready as the franchise has become adult franchise and it would take time to get ready the electoral registers and therefore just to fill up the gap this article is being proposed. I also agree with my honourable Friend Mr. Santhanam when he suggests that a final date should be fixed by which time elections should be held. After all, there must be some limit within which these electoral rolls and all these formalities should be complete and the people, may really take over. If elections on adult franchise of general electorates were held, then alone, the Parliament could claim to be the representatives of the people. Since it is just to fill up the gap that this article has been proposed, I hope much time will not be lost in getting things ready for fresh general elections.

[Shri Mahavir Tyagi]

Then, there is another amendment which Dr. Ambedkar has been pleased to move that such members of this Assembly who are also members of the provincial Assemblies or provincial legislatures would be deemed to have vacated their seats here on the date immediately before the commencement of the new Constitution. But, those seats, though they will not be vacated till the commencement of the new Constitution, will be re-filled by election before the Constitution comes into force. Although those seats would not be physically vacated until before the commencement of the Constitution, the filling up of these unvacated seats, according to this amendment, will be done by elections much earlier than the seats will be really vacated. This is something which I really do not understand. It would have been better if he had said that those seats of the local M.L.A.'s will be deemed to be vacated a fortnight before the commencement of the Constitution. Within that fortnight, through indirect election, we should get those seats filled up so that at the commencement of the Constitution, this Assembly could be fully complete. That would have been the proper course. I would still suggest that the Drafting Committee might just consider the possibility of adding a few words which will change the meaning so as to enable the Government to have an election, say fifteen days before the commencement of the Constitution and also get these seats vacated before they are re-filled. That would have been more consistent.

The draft of clause (3) as now proposed is complete to a greater extent. In the previous draft only such members were debarred from continuing as members as were members of the local legislatures on the 6th October 1949. All such persons who became members of the local legislatures after the 6th October 1949 were not disqualified. Now, this new proposal is complete from that point of view as it lays down that if a member of the Constituent Assembly of the Dominion of India was on the 6th October or thereafter becomes at any time before the commencement of the Constitution a member of a House of legislature of a Governor's province or an India State Corresponding to any State for the time being specified in Part III of the First Schedule or a Minister for any such State, then, as from the date of the commencement of this Constitution, the seats of such Members in the Constituent Assembly shall, unless he has ceased to be a member of that Assembly earlier, become vacant and every such vacancy shall be deemed to be a casual vacancy. Now, Sir, although there will not be many cases, or there may be no case at all, this draft, however, covers the cases of only such Members as become members of the provincial legislatures during this period. What about those who are members of the provincial Assemblies and become members of this Assembly, in this period? Strictly interpreted, under this latest draft of Dr. Ambedkar, those members who are Members of this House and who become members, either on the 6th of October or thereafter, of the House, of legislature of a province, meaning thereby, members of the local legislatures, then, those member's seats will be deemed to be vacated—such Members only who are members of this House already and are also members, on the 6th of October or thereafter, of the provincial Assemblies. What about those who are not members of this House, but are members of the provincial Assemblies and become members of this House during this period? They will also get a double membership and their seats will not be deemed to be vacated.

Therefore, this article is still slightly incomplete. I would suggest that the cases of such Members should be also covered : persons who are not members of the Constituent Assembly today or who were not members of the Constituent Assembly on the 6th or thereafter, but were on the 6th October members of, say, the U.P. provincial legislature, one or many of them—the number does not matter—being elected during this period as members of the Constituent Assembly: their cases will not be controlled even by the latest proposed draft.

Shri L. Krishnaswami Bharathi : The word is intended to cover only such cases as the honourable Member has in view.

Shri Mahavir Tyagi : He was already a member of the Provincial Assembly and he becomes a member here thereafter. The case of a gentleman who becomes a member here during this period is not, strictly speaking, legally covered but perhaps such cases may not arise.

Another point I would like to bring to your notice is that the Drafting Committee has also provided for the continuance of the Speaker and the Deputy Speaker of the Assembly. This again is bad in spirit. After all when about one hundred or so of Members in the Assembly who enjoy the membership of the Provincial Assembly when their seats are declared vacant, their substitutes will be elected. Now, when one-third or so of the House is being changed, then why force the old Speaker and the Deputy Speaker on the House? We should have said only this much that till the first day of the meeting of the Parliament the Speaker or Deputy Speaker will continue. Thereafter, the Parliament must have the liberty to elect its Speaker or Deputy Speaker afresh. This has always been the custom whenever one Session of Parliament is over and the next comes after re-election. It is their first business to elect the Speaker and Deputy Speaker. Generally the old ones are re-elected, but then the formality is undergone afresh. I suggest this is bad, on principle that the present Speaker and the Deputy Speaker—without casting any aspersion on any persons; I hope they will be re-elected should be forced on the Parliament. The fact that we put it in the Constitution that they will continue does not speak well of that high office. There is an office endowed with a complete command of confidence of the House. It is not fair that this House should come between the Parliament and its free choice of officers. We should not interfere with the working of the House of Parliament. It will in itself be competent to elect its own Speaker, and the Deputy Speaker when it meets for the first time after the general elections.

Mr. President : You have taken more time.

Shri Mahavir Tyagi : I have nothing more to say except putting a question. What will happen in the case of such Members of the Constituent Assembly from a province where the Provincial Assembly is dissolved and re-election takes place? Suppose in Bengal or U.P. general election takes place and their representatives are there in this Assembly. We have already provided for their continuance here, but will they continue even after the general elections are over, or will they be required to seek the confidence of the newly elected Legislative Assembly in their respective provinces? This may also be clarified.

Shri Sita Ram S. Jajoo (Madhya Bharat): Sir, I beg to move:

“That in amendment No. 9 of List I (Second Week), in clause (3) of the proposed article 311, after the words ‘an Indian State’ the words ‘or Union of States; or a member who holds any office of profit under any Government other than the ministerial office in the Union Government be inserted.”

My amendment is a very simple and short one. As a matter of fact the principles underlying this amendment have been already accepted by the Constituent Assembly in the Constitution in article 83 and I feel that this provision should be inserted in these transitional provisions to avoid any misunderstanding and ambiguity which may arise, after these transitional provisions are accepted and passed. Although we have already adopted that double membership is to be abolished by the provisions of article 82 in the Constitution but to avoid ambiguity we are doing it here as well. So I hope, to avoid ambiguity regarding the other part as well. the Honourable Dr. Ambedkar will accept this amendment.

Mr. President : Mr. Karimuddin-absent.

Mr. Guruv Reddy—absent.

Mr. Sidhwa—you had given notice of an amendment which I had promised might be taken along with this. I think it does not arise now.

Shri R. K. Sidhwa (C.P. & Berar: General): Yes.

Mr. President : There is no other amendment. The amendments and the article are now open for discussion.

The Honourable Shri Satyanarayan Sinha (Bihar: General): I request that question may be now put.

Mr. President : Some of the Members may like to speak. I will only allow one or two speakers who have not spoken. Does any Member wish to say any thing who has not moved any amendment ?

Mr. Mohd. Tahir (Bihar : Muslim): Mr. President, I find some difficulty in this article which I wish to place before the House. Clause (1) in this article is admittedly a substantive portion of this article. It says that—

“Until both Houses of Parliament have been duly constituted and summoned to meet for the first session under the provisions of this Constitution, the body functioning as the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution shall exercise all the powers and perform all the duties conferred by the provisions of this Constitution on Parliament.”

This substantive portion of this article means that the body which is now functioning, which means that the body consisting of the Members now present in the Assembly, will be the body which will form the Parliament after the commencement of this Constitution.

Now, the substantive portion of the law means that it governs the following provisions of the article. That means that clause (1) which is the substantive portion of this article should govern the other provisions of this article, i.e. clauses (2) and (3). But here we find that the position is quite otherwise. It is topsy-turvy. Actually clause (3) governs the substantive portion of this article which in my opinion, is not legal, because clause (1) says that this body will function as the Dominion Parliament, whereas clause (3) dissolves this Constituent Assembly, not wholly but partly. In fact, clause (3) means the dissolution of this body in parts. Therefore I think clause (3) is redundant and should not be included or inserted in this article.

Now, the question will arise that after this House is converted into the Dominion Parliament ‘ Members will find themselves in this position that some of them may be Members of this Dominion Parliament as well as of the Provincial Assemblies. For that, Sir, we have already adopted an article, and I refer the House to article 82 which, as has already been explained by one of my friends there, is the remedy for that, when Members are Members of this House as well as of the Provincial Legislatures. But to insert such a clause as has been done in the form of clause (3), I would say, really pollutes the whole Constitution. ‘the insertion of such a clause as clause (3) is polluting the constitution and I hope this will be considered by my Friend Dr. Ambedkar, that the substantive portion of the law should not be governed by the sub-clauses which are being entered in the article.

With these words, Sir, I close my remarks.

Mr. President : Dr. Ambedkar, have you anything to say ?

The Honourable Dr. B. R. Ambedkar (Bombay : General): Sir, before I begin, I would like your permission to omit the word “becomes” in clause (3)

of amendment No. 195, occurring between “thereafter” and “at any time before.... The word is unnecessary.

Now, with regard to the various amendments, it seems to me that there are only three that call for some consideration. The first is the amendment of my Friend Mr. Kamath who said that in clause (4) of this article, there is a certain account of discrepancy between the provisions relating to the carry-over of the Deputy Speaker of the Centre and the absence of any such provision with regard to the carry-over of the Speaker in the Provinces. I myself, and the Drafting Committee were conscious of this difference between the two provisions, and we had intended to introduce subsequently an amendment to make good the lacuna. Mr. Kamath may, therefore, rest assured that the Drafting Committee will not allow this difference to continue, but will make good by an amendment.

The other point of some substance was the one raised by my Friend Mr. Muniswamy Pillay with regard to the representation of the Scheduled Castes in the Provisional Parliament. The position is this. There are at present 310 Members of this Assembly, and the Provisional Parliament will also continue to consist of 310 Members. On the basis of population which is the principle adopted for the representation of the Scheduled Castes in the future Parliament, on a purely population basis, they should get 45 seats out of this 310. They have, as a matter of fact, today only 28 seats. The article makes a definite provision that there shall be no diminution in the 28 seats they have now. But with regard to making good the difference between the 45 to which they are entitled on the basis of population and the 28 which they have got, I think we have left enough power in the hands of the President to adapt and modify the rules so as to make good the deficiency, as far as it would be practicable to do so under the provisions of new article 312 F.

Now I come to the amendment of Mr. Pataskar. So far as I have been able to understand him, there is really no difference between the draft article and the amendment suggested by him, in principle. Both article 311 as I have moved and the amendment as moved by Mr. Pataskar agree that we ought to make a provision for the abolition of dual membership. The only question that remains is how it is to be done. According to the provisions contained in this article, what is stated is that the vacancy shall occur only from the commencement of the Constitution. He will continue sitting and functioning as a Member until that date, that is to say, 25th January 1950, assuming that the Constitution comes into existence on the 26th January. But elections to fill the seats which have so become vacant may be held at any time before the commencement of this Constitution so that when the Constituent Assembly meets as the provisional Parliament there may not be any sudden depletion in its membership. What my Friend Mr. Pataskar wants is, that the vacancy should come into effect from the commencement of the Constitution, and that the unseating should take place from one month thereafter. That is the only difference. It seems to me that it is really a matter of detail as to which date we should adopt for vacancy and which date we should adopt for unseating. The reason why we have adopted the 6th October 1949 as the date with reference to which the right of a Member to continue as such Member is to be determined is because it is the date on which we commenced this session of the Constituent Assembly. I do not wish to dogmatise that there is any particular virtue in the 6th October 1949, nor will Mr. Pataskar say that there is any virtue in the provision that he has moved by his amendment. As I said, there is no difference in principle, and we are all agreed that double membership should be avoided, and I, therefore, think that the amendment that I have moved.....

Shri H. V. Pataskar : My amendment gives the option to the Member.

The Honourable Dr. B. R. Ambedkar : That, I think, will create a lot of complication. If the Member is given the option, that will create complication, because it may be that the same evil which we want to do away with may be repeated. We must take precaution to see that the evil is not repeated. I, therefore, submit that the provisions contained in 311 should commend themselves to the House.

Shri Ram Sahai (Madhya Bharat): What about the amendment moved by Mr. Sita Ram Jajoo ?

The Honourable Dr. B. R. Ambedkar : We had anticipated the point raised by him, and we have modified my amendment 195 in which I have made provision for Indian States. The only thing I have not made provision for is for persons holding offices of profit.

Mr. President : I shall now put the amendments to vote one by one. The first set of amendments to clause (1) are Nos. 142 to 145 of Mr. Kamath.

The question is:

“That in amendment No. 9 of List I (Second Week), in clause (1) of the proposed article 311, after the word ‘Until’ the words ‘such time as’ be inserted.”

The amendment was negatived.

Mr. President : The question is:

“That in amendment No. 9 of List I (Second Week), in the proposed article 311, the words ‘the body functioning as’ be deleted.”

The amendment was negatived.

Mr. President : The question is:

“That in amendment No. 9 of List I (second Week), in the proposed article 311, for the words ‘Constituent Assembly of the Dominion of India’ wherever they occur, the words Constituent Assembly of India be substituted.”

The amendment was negatived.

Mr. President : The question is:

“That in amendment No. 9 of List I (Second Week), in clause (1) of the proposed article 311, for the words ‘immediately before the commencement of this Constitution shall, the words ‘shall itself’ be substituted.”

The amendment was negatived.

Mr. Naziruddin Ahmad : I would leave my amendment No. 146 to the Drafting Committee, Sir.

Mr. President : Now I will put amendment No. 194 of Mr. Tyagi to vote. The question is—

“That is amendment No. 9 of List I (Second Week), in clause (1) of the proposed article 311, the following be added at the end:—

‘and shall be known as the Parliament of the Union of India’.”

The amendment was negatived.

Mr. President : These are all the amendments to clause (1) Now I will put the amendments to clause (2) one by one to vote. The question is:

“That in amendment No. 9 of List I (Second Week), in clause (2) of the proposed article 311, after the word ‘rules’ the words ‘which shall as far as practicable, conform to those adopted by the Constituent Assembly’ be inserted.”

The amendment was negatived.

Mr. President : Then we have a series of amendments moved by Mr. Muniswamy Pillay.

Shri V. I. Muniswamy Pillay : In view of the assurance given by the Honourable Dr. Ambedkar I do not press any of my amendments.

Shri H. J. Khandekar (C.P. & Berar: General) : I do not want that these amendments of which I have also given notice should be withdrawn.

Mr. President : They were moved by Mr. Muniswamy Pillay. I shall put them to vote.

The question is:

“That in amendment No. 9 of List I (Second Week), in sub-clause (a) of clause (2) of the proposed article 311, for the words ‘of any State or other territory’ the words ‘of a Governor’s Province or Indian State’ be substituted.”

The amendment was negatived.

Mr. President : The question is:

“That in amendment No. 9 of List I (Second Week), in sub clause (a) of clause (2) of the proposed article 311, for the words ‘not represented’ the words ‘not adequately represented’ be substituted.”

The amendment was negatived.

Mr. President : The question is:

“That in amendment No. 9 of List I (Second Week), in sub-clause (a) of clause (2) of the proposed article 311, after the words ‘commencement of this Constitution’ the words ‘having due regard to the proper representation of the Scheduled Castes’ be inserted.”

The amendment was negatived.

Mr. President : The question is:

“That in amendment No. 9 of List I (Second Week), in clause (2) of the proposed article 311, the following new sub-clause be inserted:—

‘(d) the election of a Speaker or a Deputy Speaker for the Parliament.’ ”

The amendment was negatived.

Mr. President : Now I will put to vote the first part of the amendment (No. 178) of Prof. Shibban Lal Saksena to clause (2). The question is:

“That in amendment No. 9 of List I (Second Week), in clause (2) of the proposed article 311, for the words ‘President may by rules’ the words ‘Parliament may by law’ be substituted.”

The amendment was negatived.

Mr. President : Now we come to the amendments to clause 3. Amendment No 155 of Mr. Kamath.

The question is:

“That in amendment No. 9 of List I (Second Week), in clause (3) of the proposed article 311, after the words ‘An Indian State’ the words ‘or Union of States’ be inserted.”

The amendment was negatived.

Mr. President : The question is:

“That in amendment No. 9 of List I (Second Week), in clause (3) of the proposed article 311, the words ‘within the meaning of the Rules of Procedure and Standing Orders of the Constituent Assembly’ be added at the end.”

The amendment was negatived.

Mr. President : The next amendment to be put to vote is that of Mr. Muniswamy Pillay (No. 156) to amendment No. 195 moved by him in a slightly modified form.

The question is:

“That in amendment No. 195 delete all the words beginning with ‘and’ in the last line and add the following:

‘A member in two assemblies shall resign his membership in the legislature of a Governor’s province or an Indian State thirty days prior to this Constitution coming into effect.’”

The amendment was negatived.

Shri H. V. Pataskar : Sir, I beg leave to withdraw my amendments.

The amendments were, by leave of the Assembly, withdrawn.

Mr. President : I shall now put the amendments of Shri Brajeshwar Prasad and Shri Sita Ram Jajoo to clause (3) to vote.

The question is:

“That in amendment No. 9 of List I (Second Week), in clause (3) of the proposed article 311, for the words ‘a House’, the words ‘the lower House’ be substituted.”

The amendment was negatived.

Mr. President : The question is :

“That in amendment No. 9 of List I (Second Week), after clause (3) of the proposed article 311, the following new clause be inserted:—

‘3 (a) If a member of the Constituent Assembly of the Dominion of India was on the twenty-sixth day of January, 1950, also a nominated member of the Legislative Council of a Governor’s province, then, as from the date of commencement of this Constitution that person’s seat in the said Assembly shall, unless he has ceased to be a member thereof earlier, become vacant, and every such vacancy shall be deemed to be a casual vacancy.’”

The amendment was negatived.

Mr. President : The question is:

“That in amendment No. 9 of List I (Second Week), in clause (3) of the proposed article 311, after the words ‘an Indian State’ the words ‘or Union of States; or a member who holds any office of profit under any Government other than the ministerial office in the Union Government’ be inserted.”

The amendment was negatived.

Mr. President : Now I shall put the amendments to clause (4) to vote.

Shri H. V. Kamath (C. P. & Berar: General): Sir, in view of the assurance given by the Honourable Dr. Ambedkar that this discrepancy will be rectified I do not press my amendments Nos. 161 and 162.

The amendments were, by leave of the Assembly, withdrawn.

Mr. President : Now I will put to vote the second part of the amendment moved by Prof. Shibbanlal Saksena No. 178.

The question is:

“That in amendment No. 9 of List I (Second Week), clause (4) of the proposed article 311 be deleted.”

The amendment was negatived.

Mr. President : All the amendments to article 311 have been disposed of. I will now put the clauses of the article to vote first.

Shri Mahavir Tyagi : My amendment has not been put to vote.

Mr. President : I put it; nobody voted for it.

The question is:

“That clause (1) of article 311 stand part of the Constitution.”

The motion was adopted.

Mr. President : The question is:

“That clause (2) of article 311 stand part of the Constitution.”

The motion was adopted.

Mr. President : Amendment No. 195 has taken the place of clause (3) of amendment No. 9. In the second line of amendment No. 195 the word ‘becomes’ is deleted and the rest remains as it is.

The question is:

“That in amendment No. 9 of List I (Second Week), for clause (3) of the proposed article 311, the following be substituted :—

‘3 (a) If a member of the Constituent Assembly of the Dominion of India was on the sixth day of October, 1949, or thereafter at any time before the commencement of this Constitution a member of a House of the Legislature of a Governor’s Province or an Indian State corresponding to any State for the time being specified in Part III of the First Schedule or a Minister for any such State, then as from the date of commencement of this Constitution the seat of such member in the Constituent Assembly shall, unless he has ceased to be a member of that Assembly earlier, become vacant and every such vacancy shall be deemed to be a casual vacancy.’”

The amendment was adopted.

Mr. President : The question is:

“That in amendment No. 9 of List I (Second Week), after clause (3) of the proposed article 311, the following new clause be inserted:—

‘3 (a) Notwithstanding that any such vacancy in the Constituent Assembly of the Dominion of India as is mentioned in clause (3) of this article has not occurred under that clause, steps may be taken before the commencement of this Constitution for the filling of such vacancy, but any person chosen before such commencement to fill the vacancy shall not be entitled to take his seat in the said Assembly until after the vacancy has so occurred.’”

The amendment was adopted.

Mr. President : The question is:

“That clause (4) of article 311 stand part of the Constitution.”

The motion was adopted.

Mr. President : The question is:

“That article 311, as amended, stand part of the Constitution.”

The motion was adopted.

Article 311, as amended, was added to the Constitution.

Article 312 F

Honourable Dr. B. R. Ambedkar : Sir, I move:

“That after article 312 E, the following new article be inserted:—

‘312 F. (1) Casual vacancies in the seats of members of the provisional Parliament functioning under clause (1) of article 311 of this Constitution [including vacancies referred to in clauses (3) and (3a) of that article shall be filled, and all matters in connection with the filling of such vacancies (including the decision of doubts and disputes arising out of, or in connection with elections such vacancies shall) be regulated—

Provisions as to this filing of casual vacancies in the provisional parliament and provisional legislatures of the State.

[The Honourable Dr. B. R. Ambedkar]

- (a) in accordance with such rules as may be made in this behalf by the President, and
- (b) until rules are so made, in accordance with the rules relating to the filling of casual vacancies in the Constituent Assembly of the Dominion of India and matters connected therewith in force at the time of the filling of such vacancies or immediately before the commencement of this Constitution, as the case may be, subject to such exceptions and modifications as may be made therein before such commencement by the President of that Assembly and thereafter by the President of the Union:

Provided that where any such seat as is mentioned in this article is, immediately before, it becomes vacant, held by a person belonging to the Scheduled Castes or to the Muslim or the Sikh community and representing a State for the time being specified in Part I of the First Schedule, the Person to fill such seat shall, unless the President of the Constituent Assembly or the President of the Union, as the case may be, considers it necessary or expedient to provide otherwise, be of the same, community:

Provided further that at an election to fill any such vacancy in the seat of a member representing a State for the time being specified in Part I of the First Schedule, every member of the Legislative Assembly of that State shall be entitled to participate and vote."

Then I am moving my amendment No. 205 to substitute a different explanation.

"That in amendment No. 164 of List III (Second Week), for the Explanation to clause (1) of the proposed new article 312 F, the following Explanation be substituted:—

Explanation.—For the purposes of this clause—

- (a) all such castes, races or tribes or parts of or groups within castes, races or tribes as are specified in the Government of India (Scheduled Castes) Order, 1936, to be Scheduled Castes in relation to any Province shall be deemed to be Scheduled Castes in relation to that Province or the corresponding State until a notification has been issued by the President under clause (1) of article 300A specifying the Scheduled Castes in relation to that corresponding State;
- (b) all the Scheduled Castes in any Province or State shall be deemed to be a single community—

Then I come to sub-clause (2).

(2) Casual vacancies in the seats of members of a House of the provisional Legislature of a State functioning under article 312 or article 312 C of this Constitution shall be filled, and all matters in connection with the filling of such vacancies (including the decision of doubts and disputes arising out of or in connection with elections to fill such vacancies) shall be regulated in accordance with such provisions governing the filling of such vacancies and regulating such matters as were in force immediately before the commencement of this Constitution subject to such exception and modifications as the President may by order by direct."

I do not think that any explanation is necessary. The provisions are quite clear. If any point is raised in the course of the debate, shall be quite prepared to offer such explanation as I could give.

Mr. President : There are four or five amendments to this. No. 179, Mr. Shibban Lal Saksena.

Prof. Shibban Lal Saksena : Mr. President, Sir, there is some mistake in the printing. I will move my amendment this way—

"That in amendment No. 164 of List III (Second Week), (the first proviso to clause (1) of the proposed new article 312 F, be deleted."

I also move:

“That in amendment No. 164 of List III (Second Week), in clause (2) of the proposed new article 312 F, for the words ‘as the President may by order direct’ the words ‘as the Parliament may by law provide’ be substituted.”

Sir, this article makes provision for the filling of casual vacancies, and this proviso to clause (1) wants that the vacancies of members in this Assembly should be filled by members of the same community. I want the deletion of this proviso. My main reason for the deletion of the proviso is this: We have provided in our Constitution by the agreement of all the minorities themselves that all reservations shall go, except for the Scheduled Castes. Now, according to this proviso, the Scheduled Castes do not stand to gain, because I see that the Scheduled Castes according to their population should have about forty-five seats, whereas they have only about twenty-eight seats in this Assembly. If this proviso is strictly adhered to justice would not be done to them.

Then, Sir, for the rest, we have already decided that there should be no reservation in the general elections. To imagine that members of the legislatures in the provinces will not be generous and fair to them is something which I cannot understand. If they can trust the illiterate people in the whole country to be fair enough to return the minorities in their proper proportion, they must surely trust the members of the provincial legislatures to be much more fair to them. They will be men of knowledge, much more responsible, who will weigh the issues and who will try to see that the minorities are given not only their proper quota but even more than that. As most of the members of the provincial assemblies will be Congressmen and the Congress Parliamentary Board will give the list of candidates to be elected, I am sure that they will take care to see that justice is done to all minorities. Therefore, Sir, I do not want that our Constitution should be disfigured by this proviso. The Muslims, the Sikhs and the other minorities will surely get much better treatment at the hands of the Parliamentary Board of the Congress and the provincial assemblies than they can expect by this proviso, which will only limit them to the number of seats they hold now. For the Scheduled Castes it will be a sad thing, because these members of the Scheduled Castes can be returned to this Assembly only when scheduled caste seats become vacant. This would really perpetuate the injustice done to them by the Cabinet Mission, which gave them seats according to proportional representation in the legislatures. Hence this proviso to clause (1) must go, for it will not serve the purpose for which it is intended. I do not think that the Muslims and Sikhs feel that they will not get a fair deal in regard to the Central legislature in the by elections. Even the Scheduled Castes themselves do not want the number of seats given but they want more. That can be achieved only if this provision is deleted.

By my amendment No. 180 I want to substitute “as the Parliament may by law provide” for the words “as the President may by order direct”, in regard to casual vacancies. The reasons are the same as I have given regarding the previous amendment. I think in the matter of making rules for filling seats, the Parliament should be the final authority and not even the President should have absolute power in the matter. The same Parliament will continue which is making the Constitution and why should not they be permitted to approve the rules to fill casual vacancies ? I think that is fair and proper and in place of the President, Parliament should be substituted.

Shri V. I. Muniswamy Pillay : Sir, I beg to move:

“That in amendment No. 164 of List III (Second Week), in the first proviso to clause (1) of the proposed new article 312 F, after the words ‘the Scheduled Castes or’ the words ‘Scheduled Tribes’ be Inserted.”

In the new amendment given by Dr. Ambedkar he has made it clear that he included all such castes, races, tribes or groups within castes. It would be more appropriate if Scheduled Tribes are also included after the words “Scheduled Castes” in the main article, so that what is said in the new amendment may be in consonance with the article itself. Speaking generally on this article I have made it clear, when we discussed article 311, as to the inadequacy of the representation of the Scheduled Castes in the new provisional Parliament and I am thankful to Dr. Ambedkar for making it clear that the President will consider the case of such inadequacy and allot the number of seats that is rightly due to the Scheduled Castes. I welcome the last sentence in the first proviso “unless the President of the Constituent Assembly or the President of the Union, as the case may be, considers it necessary or expedient to provide otherwise, be of the same community.” Originally it was thought that since we were selecting only for 28 seats in the Constituent Assembly only 28 members will be taken to the provisional Parliament. Later it was thought if a member of a particular community vacated the seat that community will be returned and here was a lacuna. The question was whether it would be possible to increase the number of representatives of the Scheduled Castes. With this amendment or with the provision that has been made I feel certain that the number required for the Scheduled Castes will be assured. With these observations I support the amendment moved by Dr. Ambedkar.

Pandit Thakur Das Bhargava : (East Punjab : General): Sir I move:

“That in amendment No. 164 of List III (Second Week), in the first proviso to clause (1) of the proposed new article 312 F, the words ‘or to the Muslim or the Sikh community’ be deleted, and for the words ‘be of the same community’ the words ‘belong to the Scheduled Caste’ be substituted.”

So far as the filling of casual vacancies is concerned I wish that the basic principles which we have adopted in regard to the legislatures of the provinces and the Centre are observed. We have ruled so far that general electorates shall take the place of separate electorates and that there shall be no reservation of seats for the Muslims or the Sikhs and that there will be reservation of seats for the Scheduled Castes and they shall also have the right to contest the general seats. If this principle were given effect to, the amendment which I seek to make will be fully justified. I can understand the argument that since the old House is being continued in the coming Assembly therefore the representation of the various communities should continue as before. But this argument is certainly not valid and at the same time this principle has been departed from. In the first place, the present members from the various communities were elected on the basis of separate electorate and this is given the go-bye in the second proviso, because it clearly says that every member of the Legislative Assembly of a State shall be entitled to participate and vote, which means that for the purpose of filling casual vacancies we have adopted the principle of joint electorates in place of separate electorates. If the proviso remains as it is, it would mean that the Muslims and the Sikhs will also have the right to contest the general seats in case of casual vacancies. In this matter also this proviso departs from the original principle. When we have made departure from two basic principles—that of separate electorates as well as allowing the Sikhs and Muslims to contest general seats—it passes one’s comprehension why the accepted principle of non-reservation for Sikhs and Muslims should not be given effect to. So far as reservation is concerned we know that in this House all right-minded Muslims and Sikhs themselves gave it up. It cannot be said that the Assembly coerced them to do so. There

were two sets of persons among the Muslims. Such of them as preferred separate electorates moved their motions here and did not willingly give them up. There were others who came forward and said that they did not want reservation. These persons will be very much hurt with this provision. The same was the case with regard to the Sikhs. They voluntarily gave up reservation and it would not please the Sikhs to depart from this accepted principle. If this Constitution had been framed in 1947 I know that these reservations must have remained for Muslims and Sikhs also, but the experience of the last two years should not be lost upon us. It is absolutely wrong now to continue this and I for one would beg the House to accept the principle which they accepted with regard to the coming elections, that there shall be no reservation for the Sikhs and the Muslims. If our friends the Muslims and Sikhs want that the seats falling vacant should be filled by members of the respective community, namely either Sikhs or Muslims, let it be arranged by convention. I am not opposed to any seats being given to them but it would be wrong to disfigure the Constitution any more by reference to the principle of reservation of seats which the Sikhs and Muslims themselves have given up.

Shrimati Purnima Banerji (United Provinces: General): Mr. President, I move:

“That in amendment No. 164 of List III (Second Week), in the first proviso to clause (1) of the proposed new article 312F, for the words ‘Muslim or the Sikh Community’ the words ‘Muslim, Christian, Sikh community or by a woman’ be substituted, and at the end of the said proviso the words ‘or sex as the case may be’ be added.”

Sir, I am conscious of a spirit of diffidence in moving this amendment and sometimes feel that in doing so I may be opening myself to a certain amount of ridicule. But, even at that cost I feel I should state my case. The proviso which we are now discussing provides that in respect of the casual vacancies which are to be filled hereafter for the provisional Parliament, those belonging to the Sikh or the Muslim community will be represented by persons of that community. My amendment seeks just to stretch that same provision for women. I wish to make it quite clear that women do not want any reserved seats for themselves, but nevertheless, I suggest to the House that in respect of the number of women who are now occupying seats in the Assembly, if any of them should vacate their seats they should be filled up by women themselves. We have had casual vacancies in this House before this. Three women have retired so far. One was our late lamented Shrimati Sarojini Naidu, the second was Mrs. Vijayalakshmi Pandit and the third was Shrimati Malati Chaudhuri. Three women Members for various reasons have had to leave this House. Mrs. Naidu who could never be replaced both from among men and women, Mrs. Vijayalakshmi Pandit who is so very highly talented and our friend Shrimati Malati Chaudhuri—all these three women have been replaced by men Members. I do not speak in disparagement of the honourable Members who may have been returned in their places and I am sure they are worthy and fit Members of this House. But I do hold that women could have also filled those places with equal merit and they should have been invited to do so. Since the entire basis of the State has changed and it is no longer a police state, certain social functions such as education and health now feature among the major items of the State’s development. I feel, that not only is the association of women in the field of politics essential but it is indispensable, and therefore I feel that this indispensable section of the people should be amply represented in this House and therefore my amendment proposes that in the casual vacancies which will occur women should at least be returned to the seats which they hold today, if not more. With these words, I move.

Mr. President : The article and the amendments are now open for discussion.

Shri H. V. Kamath : Mr. President, this article provides for the filling of casual vacancies in the provisional Parliament and in the provisional Legislatures of States. The provisions of this article are good as far as they go but I feel that they could be bettered. I would invite the attention of my honourable colleagues to certain issues and doubts that have been raised in my mind on a careful perusal of this draft article 312F. To start with I shall refer to sub-clause (b) of clause (1) of this article. This sub-clause (b) provides that the filling up of casual vacancies shall be regulated by the President of the Union after the commencement of the Constitution in so far as the modifications and exceptions to the rules already passed by us are concerned. I can understand the President of the Assembly not laying those modifications and exceptions before this Assembly before the enforcement or commencement of the Constitution. But I fail to understand why, once the Constitution has been inaugurated or has commenced and the provisional Parliament has started to function, any rules made by the President of the Union after such commencement should not be laid before Parliament for consideration. This House will remember that when certain rules adopted by us a couple of years ago were sought to be amended and altered, those modifications were brought before this House and the House duly approved of them. So in this case, where the President of the Union is concerned, after the Parliament has started functioning it is necessary and advisable from the purely constitutional and also democratic point of view that the decrees or the rules made by the President of the Union should be laid before the provisional Parliament for consideration. Before the Constitution commences there may be difficulty as regards time—there may not be time enough for the President to lay the rules before the House. But once the Constitution has commenced the President of the Union must lay the modifications and exceptions that he might make with regard to the rules before the provisional Parliament for their consideration and formal approval. That is the first point.

The second point arises out of the first part of the explanation to this article. It says that “all the Scheduled Castes in any State shall be deemed to be a single community”. I am rather reluctant to use the word “community” for the Scheduled Castes by themselves as a whole. I believe the House will agree with me when I say that we long ago decided that the Scheduled Castes are not a separate community by themselves but a part of the great Hindu community. This House has decided that point. This part of the explanation, I feel therefore, is a hang-over from the past. We have not been able to shake off this misconception about the Scheduled Castes as being a community. I think therefore that this explanation must be recast so as to delete the description of the Scheduled Castes as a community. Describe them as a sub-community, as a group of the Hindu community. On that I am sure all of us are agreed in this House. Therefore, I would request the Drafting Committee and also this House to amend this part of it suitably so as to describe the Scheduled Castes as a part of the Hindu community and not as a community by themselves.

Then there is the point raised by my Friend Pandit Thakur Das Bhargava. I feel there is much force in his contention that after the decisions we made recently with regard to the abolition of reservation for the Sikhs and the Muslims, it would not be in the fitness of things to retain this so far as the provisional Parliament is concerned. An adequate safeguard is there in this proviso to clause(1):

“..... unless the President of the Constituent Assembly or the President of the Union, as the case may be, considers it necessary or expedient to provide otherwise.....”

That safeguard is there. Of course he may provide in a particular case that the casual vacancy may be filled by a Member not belonging to that particular community, on the basis of joint electorates and non-reservation of seats for Sikhs and Muslims. But I hope this aspect of the matter will be borne in mind by the President of the Assembly and the President of the Union when occasions arise in the future for filling up of casual vacancies. We may, as a matter of fact, give more seats to deserving Muslims and deserving Sikhs than is warranted by their numbers in the population, but let us not perpetuate or let us not continue during this interim period this feature or this provision of reservation and separate electorates which we have already abolished. Therefore I would very much desire that the House would clearly express its mind today that so far as the casual vacancies in the filling of seats of Muslims and Sikhs are concerned there will not be any special consideration given with regard to the reservation on the basis of population or to separate electorate.

Shri Brajeshwar Prasad : There is no provision for separate electorates.

Shri H. V. Kamath : Article 311 which we passed yesterday says the President may by rule provide for the representation in the Provisional Parliament of States not represented, and so on and so forth. The House will remember that this House itself was elected on the basis of separate electorates: General, Muslim and Sikh. if we do not clearly and categorically lay down in an article here that this will not be followed in the filling of casual vacancies, it may give room for doubt that even in future, so far as the filling of casual vacancies is concerned, the old system of the Cabinet Mission Plan might be followed. Therefore it is very essential that we should provide in this article or elsewhere that separate electorates will have no place and that all elections in the future as regards the filling of casual vacancies will be on the basis of joint electorates.

Then there is the point raised by my Friend Shrimati Purnima Banerji. Though she has not pleaded for her own sex on the basis of special reservation, yet I feel that that is a point which may be easily conceded by this House. She went so far as to say that the seat formerly occupied by the late Shrimati Sarojini Naidu cannot perhaps be filled from among the ranks of men. I know not what she implied but I would not pick a quarrel with her on that point. As a matter of fact I would not mind, I would be quite happy, if there are more women in this House than there are today, but I do not think she should make an issue of that so far as this article is concerned. So far as the work of Government is concerned, if I heard her aright, she said that women should be given a greater chance more scope, in affairs of administration and government than they are being given today. The most common and the strongest objection so far put forward by political philosophers in this connection, that is to say as regards the capability of women for government and administration is that woman is ruled more by the heart than by the head, and where the affairs of Government are concerned, where we have to be cold and calculating in dealing with various kinds of men, women would find it rather awkward and difficult to deal with such persons and that the head may not play the part that it must play in the affairs of government. If the heart were to rule and the head to take a secondary place then it is felt by many thinking men, and thinking women too, that the affairs of government might go somewhat awry, might not fare as well as we might want them to be. However, I do not wish to dwell on this point further, but I think the House will not quarrel with Shrimati Purnima Banerji on this point that where a seat held by a woman Member is vacated that seat should normally go to another woman.

Lastly, there is a point arising out of explanation (2) to this article. That is with regard to the filling of casual vacancies in provisional Legislatures of the

[Shri H. V. Kamath]

States. It is true enough that so far as the State Legislatures are concerned, the Constitution has made provisions with regard to elections to these Legislatures as well. But as far as the interim period is concerned, considering that so many changes have occurred in the States recently, in the Governor's Provinces too, what on account of integration and merger and similar other changes, I feel that so far as this matter is concerned, namely the filling of casual vacancies in the State Legislatures during the interim period, I think nothing would be lost but everything gained by the President taking the Governor of the State or the Province into consultation with him so far as this matter is concerned. The Governor being advised by this Council of Ministers in the Provinces or the States would be well posted with the local developments, and being the man on the spot, he will be able to tender advice to the President in this connection. I feel therefore, that the House will be acting wisely if we provide that the President of the Union will in this regard consult the Governor of the State in so far as the matter referred to in explanation (2) is concerned. I hope, Sir that the point I have raised will be earnestly considered by the Drafting Committee and the House for incorporation in this article at this stage or subsequently when the Constitution comes up for Third Reading.

Shri H. J. Khandekar : Mr. President, Sir, the new article 311 deals with the provisions as to the filling up of casual vacancies in the provisional Parliament and provincial legislatures of the States. I support this article with certain observations.

The article that we have passed just now, that is article 311, asks the double Members to quit this House. It is an unfortunate feature of this House that the real representatives of the masses are to go away on the 26th of January 1950. As regards the Scheduled Castes, the same mistake is being represented here in this Assembly. In the beginning, we wanted our quota to be represented in this Assembly according to our population. There was a convention that for every ten lakhs of the population of Harijans, one member will be returned to this Assembly. In this Assembly, now, there are 28 Harijan Members out of whom two are Ministers. According to the population of Harijans, we ought to have been here not less than sixty. But, unfortunately, according to the last article, 17 Harijan Members of this House out of these 28 are to go away. These Members are the tried leaders of the Harijans and the intelligentsia of the community. According to this article, these vacancies are to be filled in after the commencement of this Constitution. What I suggest is that when powers are given under this article to the President of the Union or the President of the Constituent Assembly for the filling up of casual vacancies. I propose certain things. My suggestion is that members cannot be found among the Harijan community because they are uneducated. You will not be able to get so many members to fill in these casual vacancies from amongst the Scheduled Castes. Therefore, my request is that it is necessary that the President, while considering the filling up of those casual vacancies, should consider the cases of those Members who are going out of this House being double members of this Assembly and the provincial Assembly to be re-elected. Because, as far as my province is concerned, I know that we shall not be able to get more suitable people—of course there are people among the Harijans, but they are already members in the provincial legislatures-. I think this will be the case in the other provinces also. Therefore, I earnestly suggest that the President of the Union or the President of the Constituent Assembly should consider this matter very seriously and while making rules for the filling up of the casual vacancies, he should give some option to the members of the Harijan community.

The other point is that this article says that as many members of the Harijans or Muslims or Sikhs as are here and go out, will be filled up by new members of the same community. We are 28 here; 17 are going out. According to this clause, 17 will be coming in. That means, the position will be the same. No more representation is being given to the Harijans, and as I said the last mistake is being repeated again here. What I suggest is this. The population of the Harijans in the Indian States is about one crore. I am very sorry to inform this House that when members were sent from the Indian States, not a single member was a Harijan except one from Mysore. I request you to take this fact into consideration. I do not know whether the Members from the States are resigning or not. If at all they resign, I suggest that in their places, Harijans should be elected. Moreover, I shall give you one instance. In Madras, our quota last time was eight according to the convention; but only seven members were elected. This one seat is still vacant or it was given to a Caste Hindu. That seat should be given to the Harijans. From the Central Provinces and Berar, our quota was three. Three people were elected. Afterwards one Harijan member resigned.

Shri S. Nagappa (Madras: General): Was made to resign.

Shri H. J. Khandekar : In his place a caste Hindu was elected. Of course, Dr. Raghuvira, a friend of mine, who was elected in the place of the Harijan member from the Central Provinces served here for the purpose of language. I do not know whether he resigns or not because he is not a double Member. The seat of anybody who resigns from the Central Provinces as a double member should go to the Harijans. My request is that the President of the Union or the President of the Constituent Assembly, whichever the case may be, while making rules or making provisions for the filling up of the casual vacancies, the Harijans should be given the proper quota, that is sixty. The Constitution will come into force from 26th January, 1950. We have adopted a provision in the Constitution that in the provisional Parliament the Scheduled Castes are to be given representation on their population basis. My request is that we must take into consideration this clause of the Constitution.

I support in full the explanation given in this article by my honourable Friend Dr. Ambedkar. It deals with the List of Scheduled Tribes and Scheduled Castes. As soon as this Constitution comes into force, the List of Scheduled Castes and Tribes given in the Act of 1935 goes away and for the interim period there is no list. According to the provisions of this Constitution, the President shall make the list and announce it. Of course he will do it with the consultation of the members of the Scheduled Castes or of the Parliament. That depends upon the President of the Union. But for the transitional period a list is required and as it has been covered by Dr. Ambedkar's Explanation. I fully support it.

Shri S. Nagappa : Mr. President, this article relates to the filling of casual vacancies that will be created when the double members vacate their seats. My honourable Friends Mr. Muniswamy Pillay and Mr. Khandekar made clear the position of Scheduled Castes. Now in this article it is said that the places vacated by the Scheduled Classes will be filled up by Scheduled Classes and the places vacated by Muslims will be filled up by Muslims and the places vacated by Sikhs will be filled up by Sikhs alone. In other words, the non-scheduled Caste Hindus will be returned intact. In that case, Scheduled classes have been done great injustice while filling up the vacancies in the beginning. That was explained by my friends, Mr. Muniswamy Pillay and Mr. Khandekar. But no doubt the President of the Union or the President of the Constituent Assembly empowered to do otherwise, *viz.* if he wants to bring, in the places of non-Sikhs and non-Muslims, any number of Scheduled Classes, he can do. But I want an assurance not only from the Chairman of

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the Drafting Committee but from the President of the Constituent Assembly who is here that the representation that was due to the Scheduled Classes on the population basis will be given and shall be given. No doubt what has happened has happened. Now the Provisional Parliament will be functioning from the 26th January. All these days so far as Harijans are concerned the representation was defective and I do not want that to be perpetuated in the new Republic also. It is brought to the notice of the country, the people and to the Government and I hope they will rectify it in order to justify the claims of the Scheduled Classes.

It is after all a fair demand—we are not going beyond our limits. We are asking for what is due to us. We do not want any weightage or anybody else's seat, nor do we want to claim that we are non-Hindus. I agree with Mr. Kamath that the word 'community' should not be used. But I want that a class distinction must be there. You have treated us as a different class, though not as a community. Our political right should not be taken away simply because we merge with you simply because we join with you, simply because we are here with you.

Mr. President : As I read this clause, it does not exclude Harijans being elected from other seats. It only assures that they will be elected surely from the seats, which they vacate. But it leaves open the question that they can be elected from other seats also. You started by saying that seats of the other Hindus get also reserved. That is not the case.

Shri S. Nagappa : In other words it means that. Supposing four Scheduled Classes vacate, four will come.

Mr. President : Supposing you have 27, at least 27 will surely be returned, under this. But 27 may become 54 and there is nothing to prevent that.

Shri S. Nagappa : If you confine yourself to this, it goes without saying that non-Scheduled Class Hindus will come in the same number.

Mr. President : It does not say that. It assures that 27 Scheduled Caste members will be returned. It leaves open the question as to how many more may come.

Shri S. Nagappa : My point is that the due quota of Harijans should come—whether they are to come from Sikh seat or Muslim seat I do not care. I want my number should be intact. That should be brought about and the new Republic should not begin to function with such a defective representation.

Mr. T. T. Krishnamachari (Madras: General): Question be now put.

Mr. President : Closure has been moved.

The motion is:

“That the question be now put.”

The motion was adopted.

The Honourable Dr. B. R. Ambedkar : Sir, just one or two points that have been raised in the course of this debate. The first point that has been touched upon by Mr. Saksena and Pandit Bhargava was in relation to the continuance of the representation of the Muslims and the Sikhs during this interim period. They object to this carry over on the ground that the Muslims and Sikhs have surrendered their right to special representation under the arrangements which have been entered into during the course of the proceedings of this Constituent Assembly. My submission on this point is this, that whatever arrangements have

been made, those arrangements are made in respect of the permanent structure of Parliament which is to come, into operation under this Constitution. That being so, I think it would not be right nor justifiable to alter the structure of the Constituent Assembly which in the main we are carrying over and constituting it as a Provisional Parliament.

With regard to the amendment of Shrimati Purnima Banerji, I do not think it is necessary to make a specific provision for the retention of women in this Constituent Assembly. I have no doubt about it that the President in the exercise of his powers of rule-making will bear this fact in mind and see that certain number of women members of the Constituent Assembly or of the various parties will be brought in as members of the Provisional Parliament.

With regard to Mr. Muniswamy Pillay's amendment, the new thing he seeks to introduce is the provision for the Scheduled Tribes. As a matter of fact there is no objection to making provision for the Scheduled Tribes but the point is this that at present there is no enumeration of Scheduled Tribes, because Scheduled Tribes as such has not been recognised under the Government of India Act, 1935. Whatever tribes are included for the purposes of representation under the Government of India Act are called backward tribes. Consequently, if my Friend Mr. Muniswamy Pillay were to leave this matter in the hands of the Drafting Committee, we shall probably make some suitable arrangement to give effect to his amendment.

Mr. President : I will put the amendment to vote now.

The question is:

“That in amendment No. 164 of List III, clause (1) of the proposed new article 312F be deleted.”

The amendment was negatived.

Mr. President : No. 202.

Shri V. I. Muniswamy Pillay : I leave it to the Drafting Committee. I do not press it.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is:

“That in amendment No. 164 of List III in clause (2) of the proposed new article 312F, for the words ‘as the President may by order direct’ the words ‘as the Parliament may by law provide’ be substituted.”

The amendment was negatived.

Mr. President : Then I put amendment No. 203—that of Pandit Thakur Das Bhargava.

The question is:

“That in amendment No. 164 of List III (second Week), in the first proviso to clause (1) of the proposed now article 312F, the words ‘or to the Muslim or the Sikh community’ be elected and for the words ‘be of the same community’ the words ‘belong to the Scheduled Caste’ be substituted.”

The amendment was negatived.

Mr. President : Then I come to amendment No. 204.

Shrimati Purnima Banerji : Sir, I beg leave to withdraw the amendment I have moved.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : Then I put the article as modified by the amendment No. 205. That is I put amendment No. 164, as amended by amendment No. 205 which amends the explanation.

The question is:

“That proposed article 312F, as amended stand part of the Constitution.”

The motion was adopted.

Article 312F, as amended, was added to the Constitution.

Schedules IIIA and IV

Mr. President : Then we have to take up Schedule IIIA.

Shri T. T. Krishnamachari : Sir, Schedule III-A is not being moved. It can be taken out of the List. That is the idea.

Mr. President : So there is no question of amendments arising.

Shri Brajeshwar Prasad : But the proper procedure is that it must be moved. What is the idea? Is it to be held over?

Mr. President : It is not in the Draft Constitution. It was given only as an amendment and when that amendment is not moved, there is no question of amendments to that amendment arising. So Schedule III-A goes, with all its amendments.

Then we take up Schedule IV.

Shri T. T. Krishnamachari : Sir, I move that Schedule IV be deleted.

Some Honourable Members : How can it be deleted?

Mr. President : So far as the Drafting Committee is concerned, they have been moving for deletion of particular articles. Now, there are amendment to this Schedule IV. I think it will be better if Dr. Ambedkar were to explain the position as to why the Schedule is dropped, because Members have given notice of amendments. That will make the position clear.

The Honourable Dr. B. R. Ambedkar : Mr. Krishnamachari will explain.

Shri T. T. Krishnamachari : Sir, the Fourth Schedule was necessary because certain provisions were put in the Constitution in order to describe the relations of the President and the Governors *vis-a-vis* the Ministers. It has now been felt that the matter should be left entirely to convention rather than be put into the body of the Constitution as a Schedule, in the shape of Instrument of Instructions, and, there is a fairly large volume of opinion which favours that idea. Therefore, we have decided to drop Schedule III B which we proposed as an amendment and also Schedule IV which finds a place in the Draft Constitution, because it is felt to be entirely unnecessary and superfluous, to give such direction in the Constitution which really should arise out of conventions that grow up from time to time, and the President and the Governors in their respective spheres will be guided by those conventions. As these schedules were felt to be superfluous I had moved that the second Schedule should be deleted.

Shri B. Das (Orissa: general): Sir, I am confused. I do not wish that the Schedule IV should be withdrawn bodily so soon. Let us pass all the Schedules dealing with the powers of the Governor-General and the Governor, and if the Drafting Committee think it necessary to drop any of them, then they can do so at a later stage. But now, at the fag end of the day, a sudden surprise

is sprung upon us with the motion that the Schedule IV be dropped. It is difficult for us to understand the position. I would like, for instance, to know what my Friend Pandit Thakur Das has to say on it. I am not a lawyer and so I would like to know what his opinion is. I think it would be better to take up the deletion of Schedules after we have passed all the articles that are left over. That is my submission.

Shri Rohini Kumar Chaudhuri (Assam: General): Mr. President, Sir, I have come here only to get one point clear. I do not understand why Schedule IV has been dropped altogether. Is it because it is thought that it would not be necessary to resort to any portion of that Schedule in future in the interval between now and the next general election. If that is so, I may point out that we are going to have general elections in West Bengal shortly and after that election is over, it will be necessary for the Governor to act under para. 2 of the Fourth Schedule. Para. 2 says:

“In making appointments to his Council of Ministers, the Governor shall use his best endeavours to select his ministers in the following manner, that is to say, to appoint in consultation with the person who in his judgment is most likely to command a stable majority in the Legislature..... who will best be in a position collectively to command the confidence of the Legislature.....”

So, as soon as the elections are over in West Bengal the Governor there will have to exercise the powers referred to in para. 2 of this Schedule. Therefore for the temporary period, such provisions should be made, so that these powers may be exercised when the need arises. That is the point I want to get clear.

The Honourable Dr. B. R. Ambedkar : Sir, with regard to the Instrument of Instructions, there are two points which have to be borne in mind. The purpose of the Instrument of Instructions as was originally devised in the British Constitution for the Government of the colonies was to give certain directions to the head of the States as to how they should exercise their discretionary powers that were vested in them. Now the Instrument of Instructions were effective in so far as the particular Governor or Viceroy to whom these instructions were given was subject to the authority of the Secretary of State. If in any particular matter which was of a serious character, the Governor for instance, persistently refused to carry out the instrument of Instructions issued to him, it was open to the Secretary of State to remove him, and appoint another and hereby secure the effective carrying out of the Instrument of Instructions. So far as our Constitution is concerned, there is no functionary created by it who can see that these instruments of Instructions is carried out faithfully by the Governor.

Secondly, the discretion which we are going to leave with the Governor under this Constitution is very very meagre. He has hardly any discretion at all. He has to act on the advice of the Prime Minister are the matter of the selection of Members of the Cabinet. He has also to act on the advice of the Prime Minister and his Ministers of State with respect to any particular executive or legislative action that he takes. That being so, supposing the Prime Minister does not propose, for any special reason or circumstances, to include in his Cabinet members of the minority community, there is nothing which the Governor can do, notwithstanding the fact that we shall be charging him through this particular Instrument of to the fact that there is no discretion in the Governor and there is no functionary Instruction to Act in a particular manner. It is therefore felt, having regard under the Constitution who can enforce this, that no such directions should be given. They are useless and can serve no particular purpose. Therefore, it was felt in the circumstances it is not desirable to have such instrument of Instructions which really can be effective in a different set of circumstances

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which can by no stretch of imagination be deemed to exist after the new Constitution comes into existence. That is the principal reason why it is felt that this Instrument of Instructions is undesirable.

Mr. President : The question is:

“That the Fourth Schedule be deleted.”

The motion was adopted.

The Fourth Schedule was deleted from the Constitution.

SECOND SCHEDULE

Mr. President : The House will now take up Schedule II.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

“That for Part I of the Second Schedule, the following be substituted:—

PART I

Provisions as to the President and the Governors of States for the time being specified in Part I of the First Schedule.

1. There shall be paid to the President and to the Governors of the States for the time being specified in Part I of the First Schedule the following emoluments per mensem, that is to say :—

The President—10,000 rupees.

The Governor of a State—5,500 rupees.

There shall also be paid to the President and to the Governors such allowances as were payable respectively to the Governor-General of the Dominion of India and to the Governors of the corresponding Provinces immediately before the commencement of this Constitution.

3. The President and the Governors throughout their respective terms of office shall be entitled to the same privileges to which the Governor-General and the Governors of the corresponding Provinces were respectively entitled immediately before the commencement of this Constitution.

4. While the Vice-President or any other person is discharging the functions of, or is acting as President, or any person is discharging the functions of the Governor, he shall be entitled to the same emoluments, allowances and privileges as the President or the Governor while discharging or for whom he acts, as the case may be.”

PART II

“That in the heading in Part II, after the word and figure ‘Part I’ the words and figures ‘,or Part III’ be inserted.”

“That for paragraph 7, the following paragraph be substituted:—

7. There shall be paid to the ministers for any State for the time being specified in Part I or Part III of the First Schedule such salaries and allowances as were payable to such ministers for the corresponding Province or the corresponding Indian State, as the case may be, immediately before the commencement of this Constitution.’

PART III

“That in paragraph 8, for the words ‘respectively to the Deputy President of the Legislative Assembly and to the Deputy President of the Council of State immediately before the fifteenth day of August, 1947’ the words ‘to the Deputy Speaker of the Constituent Assembly of the Dominion of India immediately before Such commencement be substituted.’

PART IV

“That for Part IV of the Second Schedule, the following be substituted:—

“PART IV

Provisions as to the Judges of the Supreme Court and of the High Courts of States in Part I of the First Schedule

10. (1) There shall be paid to the judges of the Supreme Court, in respect of time spent on actual service, salary at the following rates per mensem, that is to say:—

The Chief Justice—5,000 rupees :

Any other judge—4,000 rupees :

Provided that if a judge of the Supreme Court at the time of his appointment is in receipt of a Pension (other than a disability or wound pension) in respect of any previous service under the Government of India or any of its predecessor Governments or under the Government of a State or any of its predecessor Governments, his salary in respect of service in the Supreme Court shall be reduced by the amount of that pension.

(2) Every judge of the Supreme Court shall be entitled without payment of rent to the use of an official residence.

(3) Nothing in sub-paragraph (2) of this paragraph shall apply to a judge who was appointed as ‘a judge of the Federal Court before the thirty-first day of October, 1948, and has become on the date of the commencement of this Constitution a judge of the Supreme Court under clause (1) of article 308 of this Constitution, and every such judge shall in addition to the salary specified in sub-paragraph (1) of this paragraph be entitled to receive as special pay an amount equivalent to the difference between the salary so specified and the salary which was payable to him as a judge of the Federal Court immediately before such commencement.

(4) Every judge of the Supreme Court shall receive such reasonable allowances to reimburse him for expenses incurred in travelling on duty within the territory of India and shall be afforded such reasonable facilities in connection with travelling as the President may from time to time prescribe. (5) The rights in respect of leave or absence (including leave allowances) and pension of the judges of the Supreme Court shall be governed by the provisions which, immediately before the commencement of this Constitution, were applicable to the judges of the Federal Court.

11. (1) There shall be paid to the judges of the High Court of each State for the time being specified in Part I of the First Schedule, in respect of time spent on actual service, salary at the following rates per mensem, that is to say

The Chief Justice—4,000 rupees

Any other Judge—3,500 rupees

(2) Every person who was appointed permanently as a judge of a High Court in any Province before the thirty-first day of October, 1948, and has on the date of the commencement of this Constitution become a judge of the High Court in the corresponding State under clause (1) of article 310 of this Constitution, and was immediately before such commencement drawing a salary at a rate higher than that specified in sub-paragraph (1) of this paragraph, shall be entitled to receive as special pay in amount equivalent to the difference between the salary so specified and the salary which was payable to him as a judge of the High Court immediately before such commencement.

(3) Every such judge shall receive such reasonable allowances to re-imburse him for expenses incurred in travelling on duty within the territory of India and shall be afforded such reasonable facilities in connection with travelling as the President may from time to time prescribe.

(4) The rights in respect of leave of absence (including leave allowances) and pension of the judges of any such High Court shall be governed by the provisions which, immediately before the commencement of this Constitution, were applicable to the judges of the High Court of the corresponding Province.

12. In this Part, unless the context otherwise requires,

- (a) the expression “Chief Justice” includes an acting Chief Justice, and a “Judge” includes an *ad hoc* judge,
- (b) “actual service” includes—
 - (i) time spent by a judge on duty as a judge or in the performance of such other functions as he may at the request of the President undertake to discharge;

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- (ii) vacations excluding any time during which the judge is absent on leave; and
- (iii) joining time on transfer from a High Court to the Supreme Court or from one High Court to another.”

PART V

“That in the heading of Part V, for the word ‘Auditor- General’ the words ‘Comptroller and Auditor-General’ be substituted.

‘That for paragraph 14, the following paragraph be substituted:—

‘14. (1) There shall be paid to the Comptroller and Auditor-General of India a salary at the rate of four thousand rupees per mensem.

(2) The person who was holding office immediately before the commencement of this Constitution as Auditor-General of India and has become on the date of such commencement the Comptroller and Auditor- General of India under article 310A of this Constitution shall in addition to the salary specified in sub-paragraph (1) of this paragraph be entitled to receive as special pay an amount equivalent to the difference between the salary so specified and the salary which was payable to him as Auditor-General of India immediately before such commencement.’”

“That in paragraph 15, for the word ‘Auditor-General’ in the first place where it occurs, the words ‘Comptroller and Auditor-General’ be substituted.”

With your permission, I will explain the provisions tomorrow.

Mr. President : The House stands adjourned till 10 O’clock tomorrow morning.

The Assembly then adjourned till Ten of the Clock on Wednesday, the 12th October 1949.

CONSTITUENT ASSEMBLY OF INDIA

Wednesday, the 12th October 1949

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.

DRAFT CONSTITUTION—(Contd.)

Second Schedule—(Contd.)

The Honourable Dr. B. R. Ambedkar (Bombay: General): Mr. President, Sir, I would like to say a few words in explanation of the provisions contained in the Second Schedule, and I would like to begin with that part which deals with the salary of judges.

First of all, with regard to the Supreme Court, it will be seen that the salaries of the judges of the Supreme Court on the commencement of the Constitution will be for the Chief Justice Rs. 5,000 per month *plus* a free house, and the salary for a puisne judge will be Rs. 4,000 per month *plus* a free house. With regard to the Supreme Court, the position is this, that according to the Constitution, any Federal Court judge who chooses to become a judge of the Supreme Court will be appointed as a judge of the Supreme Court. If any judge of the Federal Court therefore chooses to become a judge of the Supreme Court, the question that arises is this: whether he should get the standard salary which has been fixed under the Constitution for the judges of the Supreme Court or whether any provision should be made for allowing him, to continue to draw the salary which he now gets as a judge of the Federal Court. The decision of the Drafting Committee has been that while the normal salaries of the Supreme Court Judges should be as stated in the Second Schedule. Provision ought to be made to enable the Federal Court judges to draw the salary which they are drawing at present in case they choose to become judges of the Supreme Court. For this purpose, the judges of the Federal Court are divided into two categories—those who are appointed as permanent judges before the 31st October 1948 and those who are appointed after 31st October 1948. In the case of the first category, *i.e.*, those who are appointed before the 31st October 1948, they will get a personal pay which would be equivalent to the difference between the salary which has been fixed by the Second Schedule and the salary that was payable to such a judge immediately before the commencement of the Constitution. With regard to those who are appointed after the 31st October 1948, they will get at the rates fixed in the Second Schedule, so that the Chief Justice of the Supreme Court will get Rs. 2,000 more than the salary fixed for the Chief Justice under the Constitution, while the puisne judges of the Federal Court, if they go to the Supreme Court, will be getting Rs. 1,500 in excess of the normal salary which is fixed for the puisne judge of the Supreme Court.

Coming to the High Court, the normal salary fixed under the Constitution for the Chief Justice is Rs. 4,000 and the normal salary for the puisne judges is Rs. 3,500. Here again, we have got a provision in the Constitution that any judge of a High Court, if he wishes to be appointed to the High Court, under the Constitution, the President is bound to appoint him and consequently the same problem which arises under, the Supreme Court also arises in the case of

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the High Court, because those judges who are now existing judges draw, in some cases, a higher salary than the salary that is fixed in the Second Schedule. In order, therefore, to remove any possible grievance, it has also been decided to follow the same procedure as has been followed in the case of the Federal Court, namely, to divide the judges into two categories—those appointed before the 31st October 1948 and those appointed thereafter. Thus, those in category one will get an additional pay as personal pay which will be equivalent to the difference between the salary fixed by the Constitution and the salary which they are drawing, and those who are in category two will get the salary as fixed by the Constitution.

Perhaps, it might be necessary to explain why we have adopted the 31st October 1948 as the dividing line. The answer is that the Government of India had notified to the various High Courts and the Federal Court that any judge who is appointed before the 31st October 1948 will continue to get the salaries which he was getting now but that the same assurance could not be given with respect to judges appointed after the 31st October 1948. It is in order to guarantee this assurance, so to say, that this dividing line has been introduced.

I would like to say a word or two with regard to the scale of salary fixed in Schedule 11 and the scale of salary obtaining in other countries. For instance, in the United States the Chief Justice gets Rs. 7,084 per month while the puisne judges get Rs. 6,958. In Canada the Chief Justice gets Rs. 4,584 and the puisne judges get Rs. 3,662. In Australia the Chief Justice of the High Court gets Rs. 3,750 and the puisne judge gets Rs. 3,333. And in South Africa the Chief Justice gets Rs. 3,892 and the puisne judges get Rs. 3,611. Anyone who compares the standard salary that we have fixed in Schedule II with the figures which I have given I think, will realise that our salaries if at all compare much better with the salaries that are fixed for similar functionaries in other countries except the U.S.A.

In fixing these salaries we have been as fair as we could be. For instance, it would have been perfectly open for the Drafting Committee to say, following the rule that those who have been appointed before the 31st October, 1948, if their salary is in excess of what is the normal salary fixed by the Constitution, we could have also made a provision that the Judges of the High Court of Nagpur shall get less than the normal salary, because their salary is less than the normal salary as at present existing. But we do not propose to perpetuate any such grievance and therefore we have not introduced a counter vailing provision which in strict justice to the case, the Drafting Committee would have been justified in doing. I therefore submit that so far as the salary of the judiciary is concerned there can hardly be any ground for complaint.

I come to the question of the President. The President of the Union is obviously a functionary who would replace the present Governor-General and in fixing the salary which we have fixed, namely Rs. 10,000, we have to consider, in coming to a conclusion, as to whether it is less or more than the salary that the Governor-General has been drawing.

As every one knows, under the Government of India Act, 1935, the salary of the Governor-General was fixed at Rs. 2,50,800 a year which came to Rs. 20,900 *per mensem*. This salary was of course subject to income-tax. Under the recent Act passed by the Legislative Assembly the salary of the Governor-General was fixed at Rs. 5,500 but that salary was free of income-tax. I am told that if the salary of the Governor-General was subject to income-tax it would come to somewhere about Rs. 14,000. In fixing the salary of the President at Rs. 10,000 we have taken into consideration two factors.

One factor is that the salary of the President should be subject to income-tax. It was felt by the Drafting Committee as well as by a large body of Members of this House that no person who is a functionary under the Constitution or a civil servant under the Constitution should be immune from any liability imposed by any fiscal measure for the general people of this country. Consequently, we felt that it was desirable to increase the salary of the President if we were to make it subject to income-tax.

The other reason why we fixed the salary at Rs. 10,000 is to be found in the salary of the existing Chief Justice of the Supreme Court, which is Rs. 7,000. It was the feeling of the Drafting Committee that since the President was the highest functionary in the State there ought to be no individual who would be drawing a higher salary than the President and if the Chief Justice of the Supreme Court was drawing a salary of Rs. 7,000 it was absolutely essential, from that point of view, that the salary of the President should be somewhat above the salary of the Chief Justice. Taking all these factors into consideration we thought that the proper salary would be Rs. 10,000.

Then, the President's salary carries with it certain allowances. With regard to these allowances I might mention that when the Government of India Act, 1935, was passed the Act merely fixed the salary of the Governor-General. With regard to the allowances the Act says that His Majesty in Council shall fix the same by Order but unfortunately the provisions of Part II of the Government of India Act, 1935, were never brought into force and consequently no such Order was ever made by His Majesty in Council although a draft of such an Order was prepared in the year 1937. So far therefore as the Government of India Act is concerned, there is nothing stated with regard to the allowances and therefore that Act did not furnish the Drafting Committee any material basis for coming to any definite conclusion. Consequently the Drafting Committee has left the matter with the provision that the President shall continue to get the same allowances which the Governor-General got at the commencement of the Constitution. Later on the Parliament may change the salary and allowances of the President subject to this, that they shall not be changed during the tenure of the President concerned.

I should like to give the House some idea as to what are the allowances which the President would be entitled to get if the provision suggested by the Drafting Committee, that the allowances payable to the Governor-General at the commencement of the Constitution should operate.

I find from the budget estimates for 1949-50 the following figures were included in the budget under the heading "Allowances to the Governor-General":

1. Sumptuary allowance of Rs. 45,000 per annum.
2. Expenditure from contract allowance Rs. 4,65,000.
3. State conveyance: Motor cars: Rs. 73,000.
4. Tour expenses : Rs. 81,000.

Total allowances are Rs. 6,64,000 per annum, according to the budget estimate of 1949-50.

I need not say, as I said, anything about the allowances, because the allowances are liable to be changed by Parliament at any time. The important question is about the salary and I submit that the salary of the President as fixed at Rs. 10,000 seems to me as also to the Drafting Committee to be a very reasonable figure, having regard to the circumstances to which I have referred.

I need not say much about the salary of the Governors. That has been fixed by an Order made recently by the Governor-General, and they appear to

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me to be quite reasonable and it also observes the same principle that in the provinces where the highest paid official is the Chief Justice the Governor should get something more than the Chief Justice of the province. It is from that point of view that the figure for the salary of the Governors has been fixed.

The only other provision to which I would like to refer is that originally it was not proposed to make any provision with regard to the salary of the Comptroller and Auditor General. There again, the salary has been fixed at Rs. 4,000 by Schedule II, subject to the proviso that while the present incumbent continues to function as the Comptroller and Auditor General he will get as personal pay the difference between the salary fixed by Schedule II and the salary which he is at present getting. When that incumbent disappears and another is appointed he will get the salary that is fixed by the Schedule.

I hope that the figures suggested by the Drafting Committee as salaries for the various functionaries dealt with in this Schedule will commend themselves to the House.

Mr. President : I now come to the amendments. I shall take up the different parts separately and ask Members to move them as we come to them. The first amendment is to Part I, amendment No. 259, by Shri Mahavir Tyagi.

Shri Mahavir Tyagi (United Provinces: General): *[Mr. President, Sir, I do not think that a salary of ten thousand rupees per month for the President and a salary of five thousand rupees for the Governor is to do much. After pondering over the problem for two days, I decided that I should freely express my opinion on this occasion. I feel that all the people in the civil services and Government officials should lead a good life and should command respect. India is a land of seers. Here dignity is not determined by money. (*Hear; hear*). In India sacrifice and penance have ever commanded respect. The Government officials who have taken upon themselves the burden of service permanently should have such salary as may enable them to lead a life of comfort and respect and to be free from want. But the political leaders among whom I count the President, the Governors and the Members of the Assembly also, who hold high Government offices through politics should discharge their duties in a spirit of selfless service. It has become customary in the world to provide high salaries for such functionaries and it appears that we also have no hesitation in providing high salaries. But I appeal to the Constituent Assembly that we should create a new precedent of sacrifice so that we may be able to set an example before the world and show to it a new path. We were able to achieve success and freedom, not because we were persons of wealth but because we were rich in renunciation. At present when there is moral degradation in the world, it is all the more necessary that India should show the correct path and should place before it the ideal of serving the nation through sacrifice. By our sacrifice and penance we would create an atmosphere of sacrifice not only in our own country but in the whole world. A society comes into being only through sacrifice, and for its uplift too it is necessary to awaken and encourage the feelings of sacrifice.

I think that the President of a nation is the symbol of its dignity. It is wrong to think in India that we can have dignity only through money. (*Hear; hear*). A dignified position can be achieved here only through sacrifice. It would be wishful thinking among us if I want that the presidential post should be honorary, The State should bear his expenses. But the person who holds the highest post in the land should lead as simple a life as that of a sanyasi. This is a land of the poor and the money that is realised from them through

*[] Translation of Hindustani speech.

taxes increases their poverty. I do not think that politicians should freely use that money for their personal use. Therefore, if no other change is possible at present I place for your acceptance the amendment that “the salary of the President shall not exceed ten thousand rupees”. Instead of fixing the salary at ten thousand it would be better to state that it shall not exceed ten thousand and that the salary of the Governors shall not exceed five thousand, so that if the future Parliament wants to lead the politics of the country on the path of sacrifice and penance it may be possible for it to reduce these amounts. It will be a pious hope for me if I wished that the members of the legislature also should not get anything else besides food allowance and travelling allowance. I am confident that if we enforce such a scheme, simplicity and honesty will surely prevail in the country and thereby we would be able to put a stop to the moral degradation that we find in the world today.

I have no objection in regard to the salaries of permanent government officials. Their salaries should be increased according to the conditions obtaining in the country. But those, who have followed the ideal of Mahatma Gandhi and have won the confidence of the poor people, should lead the life of the poor. Even if we meet the Presidents of other great nations we should talk to them in a humble way, because by doing so we would only enhance our prestige. At the same time we should lead the politics of the country with pride and self-confidence. I have nothing more to say on this. I only place my amendment before the House and appeal to it that because ours is a poor nation, our President should lead the life of the poor, so that he may be able to pay more of his attention towards his poor countrymen.

I have to say one thing more. Whenever money and political power are centred together at one place there occur corruption and degradation. The people begin to feel the authority of the persons who holds the reins of politics and thus a stronghold of corruption and degradation is created around him. The guards of the stronghold do not permit that political authority to awaken and nor do they allow any reform because they fear that any kind of reform might be detrimental to their pleasure-seeking. This increases the tendency to degradation. We should place high ideals before our President. If we give him money only he would command no respect in the country. Therefore, I appeal to the House that our President should work in an honorary capacity and should lead the life of the poor. This alone is in the best interest of the country, and this alone can make our President acceptable to the poor. With these words I move my amendment which reads thus:

“That in amendment No. 207 of List VI (Second Week), in paragraph 1 of the proposed Part I, before the figure ‘10,000’ and before the figure ‘5,500’, the words ‘not more than’ be inserted.”]

Prof. Shibban Lal Saksena (United Provinces: General): Mr. President, Sir. I beg to move:

“That in amendment No. 207 of List VI (Second Week), in paragraph 1 of the proposed Part I, for the figure and word ‘10,000 rupees’ the figure and word ‘1 rupee’ be substituted.”

Sir, I am glad my honourable Friend, Mr. Tyagi has already delivered his speech on my amendment rather than on his own. I am glad that the sentiments which I wanted to express by my amendment are shared by him and also by many members of the House as is evident from the cheers that the House gave him. In fact when I gave this amendment, it was after considerable hesitation. I felt that what I felt I must express in my amendment. The President of the Republic in our Constitution is a substitute for the British King because we have modelled our Constitution on the British lines. Now, in our country the ideal of Kingship is illustrated by kings like Janaka who lived like sanyasis. Even in our own times our master, our father, Mahatma Gandhi put before us the same ideal. I therefore think Sir, that by providing 1 rupee as the salary for the

[Prof. Shibban Lal Saksena]

President, we shall only be doing something which is in consonance with our ancient civilisation and culture. So, by accepting this amendment, we shall be placing before the world and before the country, the ideals of our ancient civilization and culture. This will also ensure that the post of the President will not be aspired for by greedy men, but the honours shall be bestowed on men who are intellectually, morally and spiritually fit for the job, and who do not want to take it for the salary attached to it but who want to serve the country in the spirit of King Janaka, of Mahatma Gandhi and other great kings of ancient India.

In our Constitution we have armed the President with very wide powers. Schedules 3(a) and 4 of the original Draft containing Instruments of Instructions have been taken away from the Constitution. So that now the Constitution does not fetter his discretion in any manner. In our Constitution the President is authorised to do as he likes. We have given him very great powers. In fact throughout these discussions, on the Constitution, I have been opposing this piling up of all power upon him, because actually he will exercise all the powers on the advice of the Cabinet, but if the President is a sanyasi, then I am sure no Prime Minister shall have the courage to deflect him from the right course and he will be able to carry out his duties in an impartial manner.

Sir, when I put this figure I was also influenced by the present salaries and allowances of the Governor-General. I am told by my honourable Friends on the Finance Committee that the present budget of allowances etc. of the Governor General comes to about Rs. 20 lakhs per annum of which about Rs. 11 lakhs is spent on the repairs to the Government House alone and the remaining Rs.9 lakhs on sumptuary and other allowances of the Governor-General. I think, Sir, in a poor country like India whose leader Mahatma Gandhi put before us the ideals which should govern us, it should not cost this huge amount. I agree with my honourable Friend Mr. Tyagi that the entire cost of living of the Governor General should be borne by the State and I would permit him the allowances which he needs for that purpose. I am sorry today the dignity of India is supposed to consist in the huge salaries we can provide for our President and the huge buildings in which he should live. I think our ideals were different. The present Governor General when he was Premier of Madras lived in his own house and did not shift to the official residence of the Prime Minister in Madras, but here we have forced him to live in a building whose repairs alone cost about Rs. 11 lakhs. I think, Sir, that we must change these standards. We must live according to our own ideals, and our own culture and civilization. Sir, it is in that spirit that I have put forward this figure of one rupee.

Our Congress President, Sir, is an honorary person and today the Congress President has become one of the most important functionaries in the country. He devotes almost the whole of his time to the nation's service and he does not even get any allowance and yet I do not think that the work of the Congress has suffered in any manner. In fact the amount of work which our Congress President has to do is probably greater than that which would be required by the President of the Republic. I therefore think that in putting forward this figure of one rupee, I have only said what many other members also feel and which is in consonance with our ancient ideals and culture and our new aims and aspirations. I hope this amendment will be supported by the House and that the Drafting Committee will consider this measure.

Shri R. K. Sidhwa (C. P. & Berar: General): Mr. President, my amendment reads thus:

“That in amendment No. 207 of List VI (Second Week), in paragraph 1 of the proposed Part I, the following be added after the figures relating to salaries of President and Governor, in parenthesis :—

“The salaries of the President and the Governor shall be subject to income-tax.”

Sir, my reason in moving this amendment and specifically mentioning in the Constitution that the President and the Governor's salaries shall be subject to income-tax is this: Although the honourable the Mover, Dr. Ambedkar has stated that their salaries are subject to income-tax it is a common rule and practice that the income-tax has to be recovered from everyone even if it is not mentioned. It is very clear, I have no doubt about that; but despite that I am anxious that this should be mentioned for this reason. At present our Governor-General was drawing a salary which was not subject to income-tax. You know, Sir, when he was drawing Rs. 20,000 he was subject to income-tax and yet people did not know what he was actually drawing; in as much as in the Parliament when the subject came up for discussion then most of the Members did not know that his salary was subject to income-tax. This matter was discussed from one end of the country to the other and the people thought that our Governor-General was drawing in cash Rs 20,000 and putting it into his pocket, whereas actually he drew only Rs. 8,000 or 9,000. The Legislative Assembly subsequently resolved that his salary should be Rs. 5,500 without any tax. Now, if you raise it today to Rs. 10,000 and do not let the people know—the people do not generally go by the income-tax or that so much is deducted by so many other taxes, they will state that President's salary is increased from 5,500 to 10,000. People only go by the figure. They ask what is the Governor-General drawing, and the masses say that he draws Rs. 10,000. I therefore desire that this should be made very clear to the masses. Any time you may argue with the masses that the Governor-General and the Governor are subject to the payment of Income-tax. Sometimes, they hesitate to believe. When they hesitate to believe, if this is mentioned in the Constitution, they may be refuted with a definite reply. I, therefore, feel, Sir, that, though it may be redundant, though it may not be necessary, to avoid unnecessary criticism that the President and Governors draw fat salaries. the insertion of the words mentioned in my amendment is very essential.

Coming to the amount of the salary, my honourable Friends. Mr. Tyagi and Professor Shibban Lal Saksena stated that the Governor-General should be a Sanyasi. Probably they have been carried away by ideas with which we have been taught to serve humanity without receiving any remuneration. Several of us have done that in the past for the attainment of freedom and to serve humanity without receiving any amount of compensation or money. We have done free service to humanity. That is one thing. But, you should not mix up two things which are quite distinct. The Governor-General is the administrative head of the Government. He has been restricted by so many limitations in this Constitution. I ask whether the Presidents of the Indian National Congress of the Provincial Congress Committee are restricted by so many restrictions as are stated in this Constitution. Is not our President of the Indian National Congress at liberty to do what he likes and earn what he likes? Has not the President of the Provincial Congress Committee been earning? I know are have scarified and we sacrificing immensely. I am also one of them.

Shri Mahavir Tyagi : He is not entitled to use public money on himself.

Shri R. K. Sidhwa : Kindly listen to me. You have had your say. I know the value of public money. I am not carried away by sentiments. I am a practical man and I believe in reality. What is the use of wasting public money? How do you feed your President, I want to know, when you have put in so many restrictions in the Constitution that he shall not do this, that he shall not do that, that he shall be so and so and all that? Have you not passed so many paragraphs in the Constitution binding him down? My honourable Friend Prof. Shah even wanted that whatever wealth he had should be shown before he is made the President. That was lost; but you know what the President ought to be. He should be above board. He should be a man of sterling character. Although

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not within the provisions of law, but morally, he is the custodian of the wealth of the country. He has to see how that wealth is being administered. For that purpose a paltry as salary is necessary. I use the word paltry: compare the salary of 20,000 minus Income-tax which came to about Rs. 9,000 the Viceroy drew, with the net salary of about 5,000 to be drawn by the President. Is it not a great sacrifice that our people are making—one hundred per cent. cut of the previous salary of the Governor-General and fifty per cent. of the previous Governors' salaries?

I have no quarrel or argument with those members, who lack in loose words as Sanyasi President. My honourable Friend Mr. Tyagi said that the President should be a sanyasi. Mr. Tyagi may be a sanyasi as he is a Tyagi. He may become the President if he has to become President at any time. I have no arguments with him. I only ask, are we here in a Congress platform? Here we are preparing a Constitution. I have sacrificed not only by going to jail, but big monetary sacrifice. Several hundreds and thousands of people have sacrificed similarly. We should not be actuated by what we did to achieve our freedom. We have won freedom; we have served humanity, we have served the best interests of the country by sacrificing everything as our master taught us. I must say,—I am not a prophet—even if our master was alive, he would have ridiculed the idea which my two Friends have put before the House, knowing him as I do very well, although several of my Friends may know him much more than me.

I therefore contend that the salary provided in the Constitution is a very reasonable one. I must say it is a great sacrifice. Is it not a sacrifice that our workers have made, who have become leaders, sacrificing large practice from the professional point of view, lawyers and doctors. I know of instances of people who were earning Rs. 20,000 and 30 000 serving at one time for Rs. 500 and today for Rs. 1,500. Is it fair to say that this is waste of public money? We do not want to squander public money. We must be generous enough to appreciate the work of our leaders and ourselves and also be proud of what we have sacrificed and we are sacrificing today. Do not put in a proposition that would make us the laughing-stock of the whole world. If I do not get claps from the House I do not mind. If Mr. Tyagi got claps from the House because he proposed one Rupee of a little more as a salary, I do not mind. If I am opposed in this House, I do not mind because I feel that this is the right proposal. I feel that without salary, that would make us the laughing-stock before the whole world. We must realise the great sacrifice that has been made by the President and the Governors in accepting this salary. I will come to the allowances when the time comes. So far as salaries are concerned, I think this is reasonable. May I move the amendment regarding the allowances, Sir?

Mr. President : Yes; you may move that.

Shri R. K. Sidhwa : Sir, my amendment No. 262 relates to the allowances in paragraphs 2 and 3. I move:

“That in amendment No. 207 of List VI (Second Week), for paragraphs 2 and 3 of the proposed Part I, the following be substituted :—

‘There shall be paid to the President and to the Governor the following allowance :

The President shall draw a lump sum of Rs. 135,000 per annum which shall include the cost of renewal repair and maintenance of furniture and motor vehicles, also including sumptuary, contract and all other allowances.

The President shall also draw Rs. 10,000 per annum as touring expenses.

The Governors shall draw a lump sum of Rs. 15,000 per annum which shall include the cost of renewal, repair and maintenance of furniture and motor vehicles, also including sumptuary, contract and all other allowances.

The Governors shall also draw Rs. 7,000 per annum as touring expenses.’ ”

So far as the allowances of the Governor-General were concerned, I was myself hunting since yesterday the Orders made by His Majesty in Council for the Governor-General and I could not find any Chapter or Schedule except for the Governors. My honourable Friend Dr. Ambedkar made it very clear that the Schedule never came into existence. I thought it may be somewhere and that I was not able to lay my finger on it, I now learn that it never came into existence and that the Secretary of State fixed the allowances for the Governor-General. What was that, I do not know. But, Dr. Ambedkar gave us an illustration which I had also culled from the last budget as to what was provided for our Governor-General. He has given a figure, Rs. 6,64,000 for the various types of allowances for the Governor-General.

With your permission, Sir, I would like to correct Rs. 35,000 into Rs. 1,35,000. My reasons are these. When I went for the first time after the attainment of independence into the Government House in Delhi,—so many of my friends must have also gone—my first impression was that the Government House was built only yesterday. My friends must have seen the tip-top way in which the building has been maintained. I can assure that the money which has been spent in the past is really well spent. The floor which has been used was shining like a mirror, the coiling, the golden colours and paintings and the various upholstery and the household requisites were as if only put in yesterday. The reason was good and open fact maintenance and up keep. Whether it was a woman housekeeper or man household I do not know; whoever it was deserves the greatest credit of the people of the country in keeping this historical place in such a condition as it is at present. It has been suggested that the building of the Government House should be turned into a hospital. I oppose that view. This is not meant for a hospital although it may be appealing to my friends Mr. Saksena or Mr. Tyagi. This should be used for a useful purpose. It is being used today for a museum and thousands of people are visiting it and have an opportunity to see the Government House.

Dr. P. S. Deshmukh (C. P. & Berar: General): What are we discussing? is it Government House or allowances?

Shri R. K. Sidhwa : Allowances. We must see that we are not miserly in that. I have therefore provided Rs. 1,35,000. The sum of 1,35,000 includes the Sumptuary allowance, contract allowance, and renewal of furniture. If you were to see the Order-in-Council providing allowance for Governors you will find that even the Bombay Governor gets only 35,000 and the staff—Military Secretary etc. 1,36,000. I am not touching that. They may be paid for actual number of appointments. I am told that the Bombay, Madras and Bengal Governors who had bands have abolished them. The maximum given to Madras is Rs. 43,000. If he has a body guard he is paid Rs. 1,26,000. I am not mentioning that in my allowance. Then there is a Surgeon and his establishment—maximum is Rs. 36,000 for Madras and 33,600 for Bombay I am not touching that. Because these are services which have to be paid. Then comes the maintenance and repairs of furnishings of official residences. Maximum is 34,000 to Bengal Madras 21,500 and Bombay is 25,000 with a minimum of 4,000 to Assam. We have seen the Government Houses of Governors and they are also big enough. Our Governor-General was Governor of Bengal and he stated there were 134 rooms and he was not himself able to visit these rooms and for its maintenance Rs. 25,000 may be a somewhat reasonable amount. Therefore after seeing the Government House in Delhi I was actuated to increase this amount to Rs. 1,35,000.

For Contract Allowance, i.e., an allowance for miscellaneous expenses including maintenance of motor cars a sum of Rs. 1,08,000 is provided for Bombay; Madras comes next and Bengal comes third. Minimum is 11,500 for Orissa.

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Tour expenses are very heavy. 1,22,000 for Bengal, 1,13,000 for Madras and 65,000 for Bombay is provided. Previously the Governors used to visit for pleasure. They had no duty to perform. Rather he was an administrative head and in that sense he was Executive head and probably he had to travel about. Today our Governors will not have that executive Work. They will only visit whenever occasion arises. Therefore I have given for touring 10,000 to the President and 7,000 to Governors. I consider it a reasonable amount. The Governors are not expected to go away from their places and the President also. So I think a lump sum of 1,35,000 for the President and 15,000 for Governors would be reasonable, for repair and maintenance of furniture and motor vehicles also including sumptuary and other allowances, instead of the 35,000 I had provided previously.

The Honourable Dr. Ambedkar stated that these may be left to Parliament to decide. This is a very big item. I am told now 18 to 20 lakhs is being spent for the Government House, Delhi, for various purposes. We have no definite figures but a very large sum is being spent. Therefore I do feel that a specific mention in a schedule should be made for the purpose of Allowances for the President and Governors. After all the salaries are for their own personal purposes and I do not want to be told by the people that the Governors have taken small salaries and they are indirectly getting some money from these allowances. We have to tell the public at the same time that from the heavy sum of 2 lakhs allowances we have come to a small sum which is really necessary for the upkeep of the Government Houses. If we are simply converting the structure of the living of the Governors and Presidents by asking them to become Sanyasis, then let me tell you that these Government Houses are not suitable. Then they have to take to some huts—perhaps the time may come I do not know when there may be; when our outlook and our system of living is changed. We do not want the articles in Government House to be destroyed or spoiled. We have to maintain them at the State expense and it is for the future generation really to see that these buildings are monuments. Of course some of these are rickety buildings. Even the Bombay Government House is very old. I do appeal to the Drafting Committee to provide allowances in the Constitution so that it may not be stated that from the allowance money is being squandered away and motives attached to Governors. With these words I move my amendment.

Shri H. V. Kamath (C. P. & Berar: General): Sir, will there be a general discussion on each part or on the whole article?

Mr. President : I will take the amendments on the whole article and then we can have the general discussion No. 264.

Prof. Shibban Lal Saksena : Sir, I beg to move:—

“That with reference to amendment No. 210 of List VII (Second Week), for paragraph 8 of Part III, the following be substituted :

‘8. There shall be paid to the Speaker and the Deputy Speaker of the provisional Parliament, such salaries and allowances as were payable to the Speaker and the Deputy Speaker of the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution.’ ”

Sir, at present, Part III says—

“There shall be paid to the Speaker of the House of the People and the Chairman of the Council of States such salaries and allowances as were payable to the Speaker of the Constitution Assembly of the Dominion of India immediately before the commencement of this Constitution.”

Now, the position is, that for the interim period there is not to be a Speaker of the House of the People or a Chairman of the Council, of States. We are now making provisions only for the interim period, and later on the Parliament will decide the salaries. Therefore the present amendment does not fit in Part III further states—

“..... and there shall be paid to the Deputy Speaker, of the House of the People and to the Deputy Chairman of the Council of States such salaries and allowances as were payable respectively to the Deputy President of the Legislative Assembly and to the Deputy President of the Council of State immediately before the 15th August 1947.”

In the amendment moved by Dr. Ambedkar he wants:—

“That for the words ‘respectively to the Deputy President of the Legislative Assembly and to the Deputy President of the Council of State immediately before the fifteenth day of August, 1947, the words ‘to the Deputy Speaker of the Constituent Assembly of the Dominion of India immediately before such commencement’ be substituted.”

If this amendment is accepted, the paragraph will read—

“..... and there shall be paid to the Deputy Speaker of the House of the People and to the Deputy Chairman of the Council of States such salaries and allowances as were payable to the Deputy Speaker of the Constituent Assembly of the Dominion of India immediately before such commencement.”

Now, this does not fit in with the present position. There is obviously some mistake, and therefore my amendment has been given. This amendment of mine says that “there shall be paid to the Speaker and the Deputy Speaker of the provisional Parliament, such salaries and allowances as were payable to the Speaker and the Deputy Speaker of the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution. I am sure Dr. Ambedkar has made some mistake and the Drafting Committee has overlooked it. I will draw the attention of my Friend Shri T. T. Krishnamachari to this portion of Part III which is obviously a mistake. We shall not have, in the interim period any Speaker of the House of the People. I hope my amendment will be accepted by the Drafting Committee and the necessary correction made.

Mr. President : Then we come to Part IV. Amendments Nos. 165 and 265 are the same; Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : (West Bengal: Muslim): Sir, I have to move Nos. 265, 267 and 270. I have consolidated them again in the latest list.

Sir, I beg to move:

“That in amendment No. 211 of list VI (Second Week), in the proposed Part IV, in subparagraph (I.) of Paragraph 10,—

- (i) for the figure ‘5,000’ the figure ‘6,000’ be substituted; and
- (ii) for the figure ‘4,000’ the figure ‘5,000’ be substituted.”

I also move:

“That in amendment No. 211 of List VI (Second Week), in the proposed Part IV, in subparagraph (3) of paragraph 10,—

- (i) for the words and figures ‘thirty-first day of October, 1948’ the words ‘commencement of this Constitution be substituted;
- (ii) for the words ‘the commencement of this Constitution’ the words ‘such commencement be substituted.”

I do not move part (iii) of my amendment.

I also move:

“That in amendment No. 211 of List VI (Second Week), in the proposed Part IV, in sub-paragraph (1) of paragraph 11—

- (i) for the figure ‘4,000’ the figure 5.000’ be substituted; and

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(ii) for the figure '5,000', the figure 4,000' be substituted."

I also move:

"That in amendment No. 211 of list VI (Second Week), in the proposed Part IV, in sub-paragraph (2) of paragraph 11,—

- (i) for the words and figure 'thirty-first day of October. 1948' the words 'commencement of this Constitution' be substituted;
- (ii) for the words 'the commencement of this Constitution' the words 'such commencement' be substituted."

Sir, with regard to the third part of this amendment, I wish to move it in a slightly altered form though the effect will be the same. The change will be merely verbal. I beg to move:

"That in Schedule Two Part IV. Paragraph 11, sub- paragraph (2), for the words 'shall be entitled' the words 'shall in addition to the salaries specified in sub- paragraph (1) of this paragraph be entitled' be substituted."

Sir, with regard to the general.....

Mr. President : Shall in addition to what?

Naziruddin Ahmad : "In addition to the salary specified in sub-paragraph (1) of this paragraph." This phraseology exactly in this form appears in sub-paragraph (3) of paragraph 10, and it has been omitted in this sub-paragraph by inadvertence, and the amendment which I suggest is appropriate in the context.

Sir, with regard to the general purpose of my amendments, they are intended increase certain salaries of the Judges of the Supreme Court and the High Courts so as to confirm to existing standards.

Mr. President : You are not moving amendment No. 271 ?

Mr. Naziruddin Ahmad : I am afraid I have not got a copy of it with me. Sir, I also move:

"That in amendment No. 211 of List VI (Second Week), in the proposed Part IV, in item (ii) of sub-paragraph (b) of paragraph 12, the words 'excluding any time during which the judge is absent on leave' be deleted."

Sir, my object, as I have already submitted, is to restore the pay of the Judges of the High Courts and the Supreme Court to the old standard. Sir, with regard to judges, one fact must be clearly remembered. It is that the Judges are taken from very successful members of the Bar who earn very good and substantial incomes. If he is not a good lawyer and does not earn much, it would not be worth while appointing him as a Judge. It is very necessary that the standard of our Judges should be adequate and should be maintained at a very high level. Judges, especially of the High Courts and of the Supreme Court, are eminent specialists and it is very necessary that they should be sufficiently and properly paid for the very high and eminent quality of their work. They must be treated as experts and must be paid on that basis. If we do not pay our Judges adequately, the result would be that in course of time very highly qualified lawyers would not be attracted to accept judgeships of the High Courts and of the Supreme Court.

With regard to the existing pay of the Judges, there was an amendment moved by Dr. Ambedkar that it should be paid only to the existing Judges. I had submitted an amendment a few days ago to article 310 to this effect, but I was then told that the proper place for it would be really this Schedule. I yielded but I do not agree that this is the proper place. Article 310 was the proper place because that article, so far as the High Court Judges are concerned, provides that on the, 26th January 1950, the existing Judges should also automatically be the Judges of the High Courts. Article 310 was perfectly unnecessary because every officer in whatever capacity he serves, automatically continues to serve although

the new Constitution comes into force. For the purpose of continuance of their services article 310 was clearly redundant. Such a provision was not considered necessary in the case of any other services. The article had a deeper purpose. I think it was introduced to reduce quietly and imperceptibly the pay of the Judges by transferring the provisions as to their pay to the second schedule and thereby getting an excuse to reduce their pay in a most indirect manner. I should think that even apart from article 310 the Judges would have continued as every other public servant would continue.

With regard to the Supreme Court Judges, the matter is entirely different. On the date on which the Constitution comes into force, the Federal Court Judges convert themselves into Supreme Court Judges. An article to that effect was necessary, but no article like 310 was at all called for or necessary in respect of Judges of the High Court. Now, Sir, article 310 allows existing Judges of the High Court to automatically carry on as Judges of the High Court on and from the commencement of the Constitution, they would have received the same salary as they were receiving previously. The pay of the Judges cannot be reduced merely because we have passed this Constitution. So, as I have already submitted, I insist that article 310 is an astute device to quietly reduce their pay.

Then we come to the question of merit. It is a well-known fact that the Judges of the High Courts were receiving high salaries commensurate with the high quality of intellectual work they were accustomed to do. In fact, by accepting the position of a judgeship of the High Court, there has already been a very substantial financial sacrifice. We have here in this House two eminent ex-Judges of High Courts and they will bear testimony that the post of a Judge of a High Court is no sinecure job. It is a very laborious and extremely anxious post, and a Satisfactory discharge of their duties involves tremendous labour and heavy work. It is not anybody and everybody who can prove to be a very good High Court Judge. It is only a specialist of very high attainments who can do so. Only a man of high intellectual abilities and one capable of putting in much industry that can discharge the duties of a High Court Judge. The qualities of the Federal Court or of the Supreme Court Judges are to be still higher. I submit therefore that the pay of these Judges should not be reduced. The pay which they were getting should be continued, but the present suggestion of the Drafting Committee is to the effect that only those Judges who were appointed before the 1st November 1948, should continue to get their previous salary, but a Judge appointed later on would be receiving much less. I do not see the justice for this distinction at all, bearing in mind that the value of the rupee has considerably depreciated apart from the present devaluation. The rupee at the most was worth, before devaluation, about four annas as compared with its pre-war value. Now on account of the recent devaluation, the rupee has further depreciated, and therefore the Judge's salary is really not worth much. The salary which is at present prevailing has been going on for a very long series of years. Also the Judges will have to pay a high rate of income-tax. If you pay a high salary to a Judge, you do not pay him all the money. You will deduct about 20 per cent. out of their pay and if the Judge has other incomes, the deduction will be much higher.

Dr. P. S. Deshmukh : Let him forego that income.

Mr. Naziruddin Ahmad : That is a high standard which is not practicable in our life. The honourable Member who interrupted me would not be willing to give up his own income. I submit that this income-tax will have to be taken into account. Minus the income-tax, the pay becomes very small, and then again on account of the depreciated value of the rupee, they get really much less. Considering the expert knowledge and high quality of work which is expected

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of them, they should continue to receive the old salary. Their life is not as boisterous or exciting as some of us take it to be. They are practically isolated from society. They cannot have the luxury of taking part in politics. (Shri H. V. Kamath: they go to clubs.) If they go to clubs, they enjoy themselves in a more sober manner than some of us would be inclined to. Judges after retirement were permitted to practise outside their Provinces. But now they cannot practise in any part of India. In these circumstances, I submit that no case has been made out for a reduction of their pay.

Coming to the pay of Supreme Court Judges, we are going to have Independence from the 26th January. (A Member: We are independent already.) We are not yet independent. We are still attached to the apron of the Anglo American bloc. We have no real liberty, no real freedom. On the attainment of the so-called Independence, the Federal Court will be converted to the Supreme Court. The Supreme Court will exercise not only the functions of the Federal Court but also those of the Privy Council. It will be the highest Court of India and will really be supreme in the matter of law. The Supreme Court will have higher powers and a high status than the Federal Court.

But while we raise the status from the judgeship of a Federal Court to that of the Supreme Court, and enhance their status and power, we are reducing their salary. This is a piece of injustice. Nothing is more important for the working of a Democracy than that the efficiency and quality of the Supreme Court Judges should be kept intact. If their pay is reduced, then only men of lesser intellect than what the increased quality, authority and prestige and power of the Court demands will be attracted to these high posts. The result would be depreciation of the quality of the work of the judiciary. The Supreme Court deserves the highest consideration from this House and the country. They have to be recruited from the Judges of the High Court and have to come to the Indian Capital and have to maintain two establishments at home and at the capital.

Then I come to the other part of my amendment relating to the pay of existing Judges. According to the present proposal, the existing Judges who were appointed up to the 31st October 1948, would a love continue to get their old pay. I submit this date is arbitrary and not based on sound principle. The salary of those Judges who were appointed after that date and before the inauguration of the new Constitution should also be protected. There is no reason why they should get less. Then there is a provision that a Judge of the Supreme Court could have an official residence; still that is confined to those Judges who will be appointed later on. Judges who were receiving high pay would be getting their pay but they would not be entitled to an official residence. I submit that the treatment of these two classes of Judges on two different bases is based on some sort of commercial instinct. I submit that all Judges of the Federal Court should have an official residence free of cost. Two of the amendments connected with this part of the subject are merely consequential and do not require any special mention.

Then I come to amendment 270, part (iii). This really fills a gap which has crept in due to an inadvertence on the part of the Drafting Committee. I draw attention to paragraph 10, sub-paragraph (3) There it is stated that an existing Judge should get the difference between the present pay and the new pay "in addition to the salary specified in sub-para (1) of this para". There the fact that the difference between the former pay and the new pay would be "in addition to" the salary which they would get is specifically mentioned in para. 10. But this condition is omitted in sub-para. (2) of para 10. The effect is that a Judge who is now drawing Rs. 4,000 who should be drawing Rs. 3,500 on account of the new pay

would get Rs. 500 more in addition to the Rs. 3,500 which is sanctioned; but as it is, it gives the impression that he gets only a special pay which amounts to the difference between Rs. 4,500 and Rs. 3,500 amounting only to 500. The fact that this would be “in addition” to the newly sanctioned pay is wanting in this sub-para (2) of para 11. This is an inadvertent omission and I submit that my amendment should be accepted.

Coming to my last amendment, this is of a formal nature and I do not wish to take the time of the House in explaining it. I suggest that it should also be accepted.

Shri Brajeshwar Prasad (Bihar: General): Sir, I move:

“That in amendment No. 10 of List I (Second Week), in the proposed Part IV, in paragraph 10,—

- (i) in sub-paragraph (1), for the figures ‘5,000’ and ‘4,000’, the figures ‘3,000’ and ‘2,000’ be substituted respectively; and
- (ii) in sub-paragraph (2), for the word ‘without’ the word ‘on’ be substituted.”

Sir, I have moved this amendment because I feel that we are providing too much to these judges. Dr. Ambedkar quoted the salaries of the judge of the Dominions. A false impression would be created in our minds unless we also bear in mind the average income of an Australian or Canadian. I would like to know what is the difference between the average income of an Indian and that of an Australian or Canadian.

Another argument which is usually advanced by those who stands for fat salaries for the judges is that they have got an important part to play in the Federal Constitution. It is said that the judges are the guardians of the liberties of the people and as such they are entitled to a higher salary. The question of dignity is also involved. These are some of the grounds on which a high salary is advocated. I would like to enter into a detailed discussion of these basic concepts which to my mind appear to be without any foundation.

If this Constituent Assembly does not abide by this criterion, the criterion being the average income of an Indian, it will be weakening the foundations of the State. Already people in this country believe that the Government of India have given all possible facilities to the Judges and Governors without taking into consideration the facts of our life. They have given all kinds of allowances to a handful of persons who are placed in different capacities such as Governor-General, Prime Minister, Ministers, Comptroller and Auditor-General, etc. These officers of the State who draw fat salaries, may I humbly submit, are looked down upon by the average man in this country. I am not in favour of the proposition that no high salaries should be paid. I am in favour of the proposition that as far as Foreign experts or technicians are concerned they should be given as much as they want but that as far as people living in this country are concerned as far as the people who are in the Congress are concerned, they must make some sacrifices for the cause of the country.

Am I to understand that after we have won our liberty all those ideals for which we stood should be put in cold storage? Are those ideals to be derided, looked down upon and laughed at? Far-sighted statesmen, politicians and public workers must bear in mind the fact that the urge for economic equality is so strong and insistent in our minds that they cannot easily afford to ignore it. I know as much as any other Member of this House that all talk of economic equality at the present moment is Utopian but you cannot say that this is a concept which has no foundation in reality. You are going to provide Rs. 5,000 and 6,000 as salaries but what about the common man in the villages? You

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say it is a democratic government. Have you consulted the people? Do you intend to do that? With great fear and trepidation, I beg to submit that I do not share the opinion of those lawyers who say that the judiciary has got a Very important part to play in the politics of our country. Of course everybody likes to over-estimate his own importance in life. A lawyer is always prone to think that he performs a very useful work in society. I would like to ask those persons who have not read the work of Mahatma Gandhi (I refer to Hind Swaraj, the political bible of every congressman) to refer to that chapter where he has expressed his own ideas about lawyers and judges.

I am of opinion that in this transition period through which we are passing it is neither the legislature nor the judiciary but the executive which has an important part to play. In the 19th century, especially in America, the judiciary did play a vital part, but circumstances as we are today the judiciary has no future in this country. The judiciary plays an important part in a society where the spirit of legalism is prevalent, where the foundations of the State are strong and where there is no revolutionary upheaval. In India the facts are otherwise. Our economic situation is deteriorating fast; the threat of internal revolution is growing and becoming insistent day by day and the danger of a foreign war is also looming large on the horizon. I do not see how the judiciary will be the guardian of our constitution, how it will be able to protect the life and liberties of the people when people are bent upon making mischief and resorting to insurrectionary methods.

Another argument usually advanced is that you must give such salaries and allowances as will enable the judges to maintain their dignity. I am apposed to this idea of dignity.' The whole concept is sheer vulgarity. The ideal before the people of this country has been plain living and high thinking. Dignity has nothing to do with money. It is only in the West where this conception is prevalent. But our conceptions and ideas are looked down upon by wise people. Some of us who still abide by our old ideals and traditions would like to emphasise, even though we know full well that we will not be heard, that we stand and shall stand by the ancient ideals of plain living and high thinking.

I would in this connection make one observation which is not strictly relevant. People may ask what about the allowances of the Members of the Constituent Assembly. I am not in favour of Rs. 45 per day. I want that we should be provided with a free third class pass for Delhi so that we may come here to attend the Assembly. We want that the Government should provide a hovel for us to live in and function as legislators, We want that this Government should provide for us only jail diet and we do not want a single pice more than this.....

Dr. P. S. Deshmukh : Are you taking jail diet?

Shri Brajeshwar Prasad : I am very keen on this point. I am sure this question is going to be raised either in this House or in the other House. It will not be strictly germane to the issue which is before the House at present if I digress more on this point.

Dr. P. S. Deshmukh : Are you eating in Jail?

Shri Brajeshwar Prasad : Dignity has no relation to the economic position of men. Men who have been honoured and respected most in this country have been saints and not millionaires. The dignity of a Judge will depend on the work that he will do, provided he does it in a spirit of service and sacrifice. It will not depend upon the amount of salaries and allowances that we may confer upon him. We are people in favour of a fat salary for a Judge? They say that

no good lawyer will condescend to become a Judge if you do not give him proper allowances and a proper salary. So, unless you tempt him with higher salaries he will not come and accept the post of a Judge. Sir, we do not like such Judges who will not work unless they get proper salaries and allowances. They are undependable persons who are mercenaries. How can they be protectors of our liberty if they cannot work unless they are given Rs. 5,000 as salary? As far as lawyers are concerned, we must do something in order to prevent them from earning beyond a certain limit. We must pass some laws so that it may become impossible for them to earn more than Rs. 1,000 a month.

Shri Mahavir Tyagi : What is your amendment?

Shri Brajeshwar Prasad : I am supporting my amendment that the salaries should be reduced and should be in consonance with the economic facts of our life. I would like to deal with this question to a greater extent and with more precision but I feel that the time at my disposal is short, I like to speak in general on the article itself. So, with your permission I shall make a few general observations on the other aspects of the article.

I refer to the schedule and to the salary of the President. I support the amendment moved by my Friend Prof. Shibban Lal Saksena. I support this amendment because I feel that the first President will be the last President under this Constitution. It is with this background that I am making my observations. Had I known that this Constitution would last for some time to come, that not only Congressmen but non-Congressmen would also become Presidents of the Indian Union, probably I would not make the observations that I am going to make now. It is really a matter of surprise and wonder how a man like Rajagopalachari our trusted leader, how a man like Sardar Vallabhbhai Patel who has sacrificed everything, how a man like your august self can think in terms of money. I know that these eminent personalities will never think in terms of money. I know, Sir, that you are going to be the President or somebody else from Members of the Congress High Command.

Mr. President : You must not go into personalities.

Shri Brajeshwar Prasad : I am not making any personal reference. I am saying that some Members of the Congress High Command will become President.

Mr. President : You need not speculate either!

Shri Mahavir Tyagi : Why not any of the low Command?

Shri Brajeshwar Prasad : I hold the opinion that a Member of the Congress High Command, who has worked throughout his life without salaries and allowances will very gladly work without any salary or allowances as President of the Union. I am, sorry, I am referring only to salary and not allowances. I feel that if we take this bold step it will rehabilitate the prestige of the Congress. It has a psychological value. The enemies of the Congress may not like this idea of mine. They may consider such an idea as impracticable. But what about Congressmen? We have no right to ask others to tighten their belts. We have no face to talk about non-violence and truth unless we reform our own conduct.

Mr. President : I think there is a lot of repetition going on. Other Members have made that point and so have you. I may remind the honourable Member that we have to finish this and the States question today.

Shri Brajeshwar Prasad : I wish to make two more observations. I would like to refer to the example of the great Khalifas of Islam. I want that our President should follow the footsteps of the great Shah Omar and Abu Bakr.

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Gandhiji was fond of referring to them as examples. Are we going to bury these principles of Asia at the altar of some European concept? I would refer the House to that letter which Gandhiji wrote to Lord Irwin on bended knees: he prayed for bread and got stones instead.

Mr. President : Amendment No. 167 of Mr. Kamath has already been covered by the amendment moved. Mr. Kamath may move 168 and the others.

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

“That in amendment No. 10 of List I (Second Week), in the proposed Part IV, sub-paragraph (3) of paragraph 10 be deleted.”

“That in amendment No. 10 of List I (Second Week), in the proposed Part IV, sub-paragraph (2) of paragraph 11, be deleted.”

“That in amendment No. 10 of List I (Second Week), in the proposed Part IV, in sub-paragraph (3) of paragraph 11, for the words ‘Every such judge’ the words ‘Every judge of a High Court’ be substituted.”

Amendment No. 168 seeks to delete sub-paragraph (3) of paragraph 10 of the proposed Part IV of this Schedule. Similarly amendment No. 171 seeks to delete sub-paragraph (2) of paragraph II of the proposed Part IV.

The last amendment is a more or less verbal one in connection with subparagraph (3) of paragraph II of this Part.

Amendment No. 167, seeking to delete the phrase or the clause “with regard to the non-payment of rent by Judges” has been covered as you, Sir, have observed, by the amendment moved by my honourable Friend, Mr. Brajeshwar Prasad.

Taking the last amendment first, that is amendment No. 173, because it is a short one, I invite the attention of the Drafting Committee to the unclear meaning of the phrase as it stands. In sub-paragraph (3) of paragraph 11 the phrase used is “Every such judge”, while in sub-paragraph (4) of para 10 of this Part, the phrase used is “Every judge of the Supreme Court”. If this phrase “Every such judge” in sub-para (3) of para 11 were to be accepted by the House, it might mean that it has reference only to persons referred to in sub-para (2) of this paragraph 11. Moreover, I see no reason why this should not be on the same lines as the language of sub-paragraph (4) of para 10, where a Judge of the Supreme Court is referred to. It is meet and proper that this phrase should be modified so as to refer to every judge of the High Court categorically and not merely to “every such judge”. Otherwise it might be misunderstood as having reference only to those judges referred to in paragraph 2.

I hope Dr. Ambedkar will find nothing in this amendment of mine to stand against on consideration of mere prestige and that he will see his way to accepting this very verbal and formal amendment.

My first amendment, Sir, which has been covered by Mr. Brajeshwar Prasad’s amendment seeks to delete the provision exempting the judges from paying rent for their residences. I wonder why Judges are being treated so very lavishly in our Constitution. If my honourable Colleagues were to look at this schedule as moved by Dr. Ambedkar, they will see that part IV relating to Judges covers nearly a page and half, while the others with regard to the President, the Governors, the Speaker, the Deputy Speaker are summed up in a paragraph or two. The House will also recollect that Dr. Ambedkar when speaking on this schedule, chose that part relating to judges first before he spoke about the President and the other dignitaries referred to in this schedule. Though I do not cavil at any member of the Drafting Committee—I feel it was perhaps inevitable that the

Drafting Committee weighted as it is by lawyers should have a soft corner for Judges; and some malicious critics might also say that some of us want to put ourselves right with our Judges in the India that is to be, we want to put ourselves in the right side of Judges and ingratiate ourselves.....

Mr. President : Please do not make any insinuations.

Shri H. V. Kamath : I, for one, do not share that view, but I fear we lay ourselves open to malicious criticism outside the House, and therefore, I felt that this provision regarding the non-payment of rent was undignified and detracts from the dignity of the Constitution. If the House will refer to article 48 of this Constitution which has been adopted already as well as article 135 of the Constitution also adopted by the House, they will see that neither the President of the Republic nor the Governor of a State has been given a residence free of rent; I mean it is not specifically stated in the Constitution. The relevant articles relating to the Governors and the President state that the President or the Governor shall have an official residence. That is all that those articles state and there is no reference to the payment or non-payment of rent. I ask the House, is it not undignified of us to say that such a dignitary will not be liable to pay rent for his house? We have already accepted the salutary provision that no dignitary, however high-placed he may be, shall be exempt from the payment of income-tax, as the Governor-General has been heretofore. When even the poorest labourer pays a rent of a rupee or more for his little tenement, why should not a judge pay a rent for his house? I am sure no judge will ask for this generous concession to him. I really fail to see why this provision as regards rent, so derogatory to the dignity of the House and of the Constitution, has been sought to be moved by Dr. Ambedkar in this House.

Next, coming to salaries, I do not wish to quarrel with him because the Chief Justice of the Supreme Court will receive Rs. 5,000 and the other judges will receive Rs. 4,000 each, and as regards the judges of the High Court, the Chief Justice will receive Rs. 4,000 and puisne judges will receive Rs. 3,500. But what I fail to see is why the present incumbents of these offices of judges of the Federal Court and the judges of the High Courts shall be entitled to receive the same salary as they were getting before. The other day the Honourable Sardar Vallabhbhai Patel pleaded for the continuance of conditions of service, salary, pension and cognate privileges in respect of the services of the Secretary of State, the I. C. S. and perhaps the Indian Police service and similar services. The House accepted, and rightly too, his plea and his appeal to the House to pass that particular article because there had been a guarantee given to these services by Government in August 1947. I do not know whether a similar guarantee has been given to the judges of High Courts and to the judges of the Federal Court and also to the Auditor-General to the effect that whensoever the Constitution will come into effect their salaries and other conditions of service will be secure. If that has been given by Government, I have nothing to say. We have got full confidence in Government, and we do not want the Government to go back on their lighted word, and if they have given any such guarantee to the judges of the Federal Court or the High Courts as regards their salaries and conditions of service, it is a different matter. Otherwise I see no reason why we should introduce a special clause or a paragraph in the schedule to the effect that the present incumbents will continue to receive the same salaries as before. I am sure that if we consult most of the judges at present serving in the High Courts and in the Federal Court, most of them, patriots as they are, and willing to serve the country with all their might and main, will not ask for this special concession. If one or two—even that I doubt,—ask for this special concession, I think the Constitution should not make a provision for a few individuals when

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no guarantee has been given by Government to these individuals. The Constitution deals with the whole country, its dignitaries, its people, its officers and public servants, etc., and not any particular individuals. If a few persons do not agree to serve the country under the Constitution we shall not and need not go out of our way to make provision for these few individuals. In the case of civilians it was rightly pleaded and accepted by the House because of the guarantee given by the Government to those civilians, but no guarantee so far as I know has been given by the Government to judges of the Federal Court or of the High Courts in respect of their salaries and conditions of service. That is why, Sir, I have sought to move the amendments Nos. 168 and 171 which have a bearing on the present incumbents of these offices of judges of the Federal Court and the High Courts.

One word, Sir, about these salaries. I agree wholeheartedly with my honourable Friend Mr. Tyagi that the highest dignitaries of the State, the President the judges and the ministers of the State ought to be genuine tyagis. He must be a real Tyagi in mind and spirit, in the spirit of the Gita which says:

अनाश्रितः कर्मफलं कार्यं कर्म करोति यः। स सन्यासी च योगी च न निराग्नं चाक्रियः

It is not the actual amount of the salary that a person is drawing; but the test is whether he is or is not attached to that salary. If he is actuated by the spirit of "Aparigraha" and is willing to resign his job at any time for a higher cause, then he is a real tyagi; he is a real sanyasi. He must serve in this spirit. In this modern world, as in ages gone before, while I will not go the length of saying: "सर्वे गुणाः कांचनमाश्रयन्ते" I feel that every person, every human being, his mind and spirit, is conditioned by the limitations of his body which persists in his corporeal or embodied existence in this world. He has got to be placed above want; he has got to be placed above fear; he has got to be placed above insecurity. Therefore salaries are and should be provided.

Dr. Ambedkar pleaded for the acceptance of these salaries and quoted certain figures from U. S. A., Canada and other countries. My honourable Friend Mr. Brajeshwar Prasad raised the pertinent point as to what relation or ratio those salaries bear to the national income or the per capita income of those countries. I do not wish to go into that subject. Dr. Ambedkar might throw some light on this subject in his reply to the debate. What I would like to say is this. Rumour has it that our Ministers have accepted a voluntary cut of 15 per cent. in their salaries. It is a very laudable decision if it is true. Mr. Brajeshwar Prasad referred to our own allowances and salaries. I am also in favour of reduction in our allowances. But, I would also suggest that this matter of allowances.

Dr. P. S. Deshmukh : Provided all accept it.

Shri H. V. Kamath : That was what I was going to say: provided that all public servants accept a voluntary cut in their emoluments; I would suggest that this thorny question of the salaries of Members of Parliament-it is well known that Members of this House do not receive any salaries, but only allowances-be placed on a sounder footing as soon as the provisional Parliament meets or earlier, and the Members also might be given a salary, and a nominal allowance when they come here. That would be much better.

Dr. P. S. Deshmukh : And a much wiser course.

Shri H. V. Kamath : Yes, much wiser too. After all Members have to come here from far distances unlike Ministers who stay in Delhi and do their work in Delhi.

Lastly, I would once again refer to my amendment which seeks to delete the provision for non-payment of rent. If this were to be included, I would also suggest that we might include therein a provision about a furnished house, and further as to how many bath rooms, how many bed rooms a Judges residence will have. Otherwise, this reference with regard to a free residence for a judge does not at all fit in with the dignity of the Constitution that we are considering, This must go, considering especially that the articles relating to the President and the Governors have no such provision exempting them from payment of rent.

Before, I close, I would earnestly request the Drafting Committee, and the House to see to it that whatever salaries may have been fixed in the past, we as a free Republic, as free India which has got to take an eminent place, in the comity of nations, which has got to play a vital part in the battle for progress and liberty and welfare of mankind, let us at least attempt in an honest and humble way to transvalue the values that exist today, and give a new direction and a new light, if I may say so to a mankind that is groping in this war-torn, war-weary world for new values and new light.

Shri Prabhu Dayal Himatsingka (West Bengal: General): Mr. President, I had given notice of amendments 212 and 213 which are on the agenda paper on page 4:

“That in amendment No. 10 of list I(second Week), in the proposed Part IV, in sub-paragraph (2) of paragraph 11, after the word and figure thirty-first day of October, 1948' the words or as Chief Justice before the tenth day of October. 1949' be inserted.”

and certain other amendments have been suggested. After having heard Dr. Ambedkar explain the position that those persons who have been appointed after 31st day of October 1948 were given an indication that that salary would be subject to the decision of the Constituent Assembly, and if the Constituent Assembly decided to reduce their salary, they will have to agree to such cuts, I do not propose to move it in that amended form. I find that in clause (2) of paragraph 11, there is a lacuna and evidently, it is due to the fact that it has not struck the Drafting Committee. It runs as follows: “Every person who was appointed permanently as a judge of a High Court in any province before the thirty-first day of October, 1948 and has on the date of the commencement of this Constitution become a Judge of the High Court in the corresponding State under clause (1) of article 310 of this Constitution, and was immediately before such commencement drawing a salary at a rate higher than that specified in sub-paragraph (1) of this paragraph, shall be entitled to receive as special pay an amount equivalent to the difference between the salary so specified and the salary which was payable to him as a Judge of the High Court immediately before such commencement.” This contemplates that any person who was appointed as a Judge before the 31st of October 1948, will continue to draw the higher salary that he has been drawing on the day of the commencement of the Constitution. But, if a person is appointed after the 31st of October, he will come within the clause, that is to say, the salary will be reduced and he will get Rs. 3,500. If such a Judge who was appointed before the 31st of October 1948 continues to be a Judge in the same province and his salary is increased in the meantime after October 1948, he will continue to draw the higher salary if he is in the same province. But, if such a Judge has agreed to go to another province and has undertaken an additional liability of having to run a second house in the new province, he will not get the benefit of the additional salary. If a Judge is transferred from Bengal to Nagpur, he will not be entitled to the benefit of this additional salary. I

[Shri Prabhu Dayal Himatsingka]

evidently feel that there must be some mistake in the drafting. Otherwise, it could never be the intention of the draftsmen that a person who continues in the same province should draw the higher salary or the difference, but if he is transferred, if he undertakes to go to another province, he will not get the higher salary. He continues to be a Judge; he was appointed as a Judge before October 1948. With your permission, therefore, I suggest:

“That in amendment 211, of List VI (Second Week), in the proposed Part IV, in sub-paragraph (2) of paragraph 11, for the words ‘in the corresponding State’ the words ‘in a State for the time being specified in Part I of the First Schedule’ be substituted.”

Therefore the effect of this amendment will be—

“That in para. 11 sub-para. (2) for the words ‘corresponding State’ occurring in the fourth line of the said para. the words ‘in a State for the time being specified in Part I of the First Schedule’ be substituted.”

There is no reason why a Judge who has agreed to go to another province should be penalised, whereas a Judge who has continued to be in his own province and has not undergone the troubles of a transfer and additional expense should get more. I think if it is properly considered the Drafting Committee should have no objection to accept the amendment proposed by me. This will do away with the anomaly of persons of the same category-to and differentiation being made between two such persons. This is not an amendment in favour of any particular person. This will cover all the Judges who will come within this category. If there is a transfer from one province to another, they, will all be covered if they are drawing higher salaries. If there are no such cases, even then it will not affect anyone under the rules. Otherwise, there is this anomaly or omission or perhaps an unconscious injustice that might be done to any-person who may have undertaken to be a Judge in another province.

As regards scale, personally I would have been glad if the salary had continued to be, for all the Judges, the same that they have been drawing, as everybody knows the Judges should be above temptation and they should have no wants. After all, they do discharge very important duties and there are so many temptations Which come in their way and if they at all have any want, they may be tempted to go wrong. Of course money is not the only thing that might tempt a person. Character and other things are needed, but the Congress party having agreed to 3,500 being fixed for future Judges I do not quarrel with it, but I certainly oppose the amendments of Shri Brajeshwar Prasad and Mr. Kamath who want to reduce, the salary further to 3,000 and 2,000 and I hope the amendment I have moved will be accepted.

Shri R. K. Sidhwa : There are some amendments in my name.

Mr. President : I shall see that.

266 and 269 are already covered. 272: Mr. Saksena.

Prof. Shibban Lal Saksena : Sir, my amendment which has been moved also by Mr. Kamath was intended to remove this provision for special pay. I am Opposed to it, on principle. We are, now framing a new Constitution and in this we are providing the salaries which the incumbents of the various offices should get in Free India. But we are here providing in the amendment moved by the Drafting Committee than Judges and the Auditor-General shall continue to get that portion of present salary which is in excess of the new salary as special pay. The reason given is that some guarantee was given to these officers that they will not have their salaries reduced in their period of office. I think the guarantee was for the Judges of the Federal Court and not for the Judges of the Supreme Court or other Judges. I personally feel that if the future Chief Justice of the Supreme Court and Judges of the High Courts and the Auditor-

General in the future will be content with the salaries provided here, I not see why Judges who will take up their places in the new set-up in the Supreme Court and High Courts and the Auditor-General should not be content to have their salaries as fixed for the new incumbents. At present the Chief Justice gets Rs. 7,000 and Judges get Rs. 5,500. According to the new provision the Chief Justice will get only Rs. 5,000. Suppose one of the Judges on the Bench is promoted to Chief Justice ship he will get only Rs. 5,000. There will be an anomaly again. As Judge he draws Rs. 5,500. As Chief Justice he will get Rs. 5,000. We cannot provide for all these anomalies. What I wanted was that the assurance given was to the existing Judges of the Federal Court and when we are abolishing the Federal Court and are providing for a Supreme Court under the new Constitution, I do not think the guarantee has any meaning. Besides I think the officers also will not relish this special pay which only they will get and their successors will not get.

I do not for a moment consider that the Chief Justice and the Judges or the Auditor-General should not have proper salaries. In fact I feel that these officers should have handsome salaries because we have put down many conditions on them in the provisions concerning them. They must retire at 65 and 60. In the 'case of Supreme Court Judges also they will not be allowed to practice at the bar after retirement. All these are stringent conditions and I do not feel that Judges of the High Court should be men who should be independent, who should not be afraid of giving rulings which may go counter to the wishes of the powers that be and for that purpose I think they must be above want, and should have no need to hanker after favours from the Executive. So the practice of giving them good salaries is quite wholesome and I also approve of the provisions. In fact I would very much like to settle the question of their pensions also. In England and America Judges of the Supreme Court have no age of retirement They go even up to ages of 80 and 90 and they have been very good judges even at these ages. We know that their pension is about three-fourths of their salaries, These are very great advantages and that contributes to their independence in giving judgments. Therefore, I am not opposed to giving high salaries to Judges. Besides I also know that those people have got to maintain special standards of life. They have to be reserved and they are denied the privileges of mixing with people. They cannot have all the parties and entertainments which the Minister enjoy and so I do not grudge them the salary provided for them. But I do not think there should be any differentiation or distinction between the first incumbents and those who succeed them. Let them all have the same salary, and if you think the salaries given are not proper, you may raise the salaries, but let it not be that the present Chief Justice of the Supreme Court will get a higher salary and his successors will get less. This should not be done.

I have to say that the accounts of the Republic will not be safe unless the Auditor-General is a man of extraordinary independence and integrity. I, therefore, think that his salary should be a handsome one and exactly on the same footing as that of the Chief Justice of the Supreme Court. I do not want that he should get a higher salary than his successors. I do not, therefore, want any difference between the salary of the present incumbent and his successors.

Mr. President : Mr. Sidhva. I have seen your amendment No. 94 and amendment No. 96. I do not think they arise now. They were to the original proposition which is embodied in amendment No. 92. That amendment has now been superseded by the amendment moved by Dr. Ambedkar, and these amendments do not fit in there. I think these are all the amendments. Shri Alladi Krishnaswami Ayyar.

Shri Alladi Krishnaswami Ayyar (Madras: General): Mr. President, Sir, in supporting the article relating to the salaries as regards the Judges of the High Courts and of the Supreme Court under the new Constitution, I should like to state a few words in support of the proposition as moved by the Honourable Dr. Ambedkar. The scale of salaries now proposed is practically the same as that proposed by the Drafting Committee in the Draft Constitution published in February last year, with slight alterations in regard to the Judges of the Supreme Court a free house being provided for, and a slight reduction in the salary of the Associate Judges. In fixing the salary of the Judges the committee was quite alive, to the importance of maintaining the dignity, the efficiency and the independence of the judiciary, especially in a Federal Constitution where the highest judiciary is called upon not merely to decide ordinary disputes between citizen and citizen, and the State and the citizen, but also to decide questions of great constitutional importance on which would depend the future development of the Constitution. They took into account the scale of salary obtaining in Canada, Australia, South Africa and the great continent of America, and the scale of salaries obtaining in India in the British regime, as also the need for some kind of retrenchment, having regard to the general poverty of our country.

In any question of revision of salary, we cannot altogether ignore the administrative set-up with which we are starting. If we are starting over-night with a Constitution, with a fresh agency, with a fresh judicial or executive agency, we might have a carte blanche, and we might provide any salary we like, having regard to the economic and other conditions of our country. We have to remember we are building upon existing foundations, though in theory we are perfectly at liberty to frame any Constitution we like and we are in a position to provide any salary we like. These are the considerations which influenced the Drafting Committee in making the particular suggestion they have made. The slight alteration in regard to the rent-free quarters is due to the peculiar conditions in Delhi. It was felt that you must be in a position to provide free residence. Instead of the Judges having to wait some time for their lodging, it was thought it was much better to provide for an official residence for the Judges. That was the reason why a provision has been made in regard to the residence of the Judges.

The Drafting Committee, I might mention, was also quite alive, for example, to the system obtaining in the Continent where the salaries of Judges are much lower than those obtaining in England and in countries which are influenced or dominated by British jurisprudence. We have rightly adopted what may be called the British system of administration of justice. On the continent the Bench and the Bar are distinct institutions. Judges are not recruited at all from the bar, and in France the highest salary of the President of the Court of Cassation is about Rs. 1,300. Similarly the highest salary in the German Reich also was about Rs. 13,00. But then, they were really part of the civil service. We were anxious that the independence of the judiciary should be maintained, and we felt that such independence is best secured by the recruitment from the bar, and we have had regard to the fact that you cannot expect professional gentlemen to accept a place on the bench unless a decent remuneration is provided for. At the same time, we could not ignore the economic condition of the country, and we cannot treat the Judges as a separate caste, different altogether from the general cadre of services in the country. Taking all these factors into consideration, with an anxiety to maintain the independence of the judiciary, their honour and their prestige, the Drafting Committee, in consultation with other bodies finally has come forward with this scheme of salaries.

There are a few other points which have been adverted to, in the course of the debate. The first thing is, where is the need for any special provision

in regard to the judges who are appointed before November last year? Now to far as the members of the Civil Service and the Judges who were appointed to their respective posts before the Indian Dominion Act are concerned, their salaries were safeguarded by a special provision in the Dominion Act, which was adverted to in the course of the debate on the Civil Services, the other day. In the ordinary course, the Judges, including the Chief Justice, continued to be appointed in the old scale of salaries, even after the Dominion Constitution came into force, and even after the publication of the Draft Constitution in February last year; and we are told, it is only after November last that the Cabinet made it known to the future appointees that they must be prepared to accept their posts subject to the new scales of pay that might be adopted by the Constituent Assembly. It is taking these factors into account that a special provision has been inserted safeguarding the emoluments of those who were appointed to their respective posts prior to November last year. It is advisedly that we put the difference is an allowance in regard to those judges who were appointed before November, because the general principle is that the particular scale of salary is applicable to all judges. Those who were appointed as judges before November entered on their task on a certain understanding and therefore the Committee thought it proper that the differential pay must be considered as a special allowance. This is to emphasise the principle that the normal and accepted salary is that salary provided in the general provision of the Constitution. This has resulted no doubt in certain anomalies. They must be faced; they cannot be helped. For example, the Chief Justice of a High Court, if appointed later as a Judge of the Supreme Court, will get a lower salary than as Chief Justice of the High Court, though it may be he has a right to free residence in Delhi. Again, judges discharging the same or similar functions will get different salaries in the same Court, but these anomalies cannot in any way affect the main principle underlying this article. This is the one reason why the article as proposed deals with this differential, pay as I have already pointed out, as a special allowance. These are the points which I wanted to refer to so far as the judges are concerned.

Then, some point was made in the course of the debate that you must make a special provision in the Constitution that the President's salary is subject to Income-tax. Unless an immunity is given in the Constitution, it is an accepted principle of constitutional law that every officer; be he the President, the Chief Justice or a Judge of the High Court, or be he a Minister, will be subject to income-tax. If you make a special provision that the President's salary would be subject to income-tax, it will be open to the argument that, so far as the other officers or dignitaries are concerned, they are not subject to income-tax. That is not the principle of the Constitution. Therefore while increasing the salary of the President to Rs. 10,000. advisedly no reference is made to the fact that he shall be subject to income-tax. Every officer, every dignitary, however high-placed he may be, will be subject to income-tax unless the Constitution expressly exempts him from the operation of the income-tax law. That is the second point that I wanted to mention.

Then, so far the President's allowances are concerned, there is no need to go into the question of the allowances of the President, because Parliament is the supreme master of the situation. Instead of cumbering the Constitution with a detailed list of the allowances to which the President is entitled, reference is made to the fact that for the time being the President will be entitled to the allowances which the Governor-General was having. Later on, it will be open to Parliament to go into the whole question and revise the allowances as circumstances, the needs of the country and the dignity of the position of the President would require.

[Shri Alladi Krishnaswami Ayyar]

With these few words, Sir, I support the article as put forward by Dr. Ambedkar.

Pandit Hirday Nath Kunzru : (United Provinces: General): Mr. President, Sir, the Draft Constitution provided that the President should get a salary of Rs. 5,000 a month and the Governor of a State Rs. 4,500 a month. It was then proposed

The Honourable Dr. B. R. Ambedkar : President Rs. 5,500 a month.

Pandit Hirday Nath Kunzru : I have got the Draft Constitution before me and I have read out the figures from it. It was therefore proposed that the salaries of the principal judicial functionaries should be lower than these salaries. It was provided that the Chief Justice of the Supreme Court should get Rs. 5,000 a month and any other judge of the Supreme Court Rs. 4,500 a month. It was also provided that the Chief Justice of a High Court should get Rs. 4,000 a month and any other Judge of a High Court Rs. 3,500 a month. So far as the High Courts are concerned, we all know that the salaries of the Judges in all provinces were not the same. In the C. P. and the provinces of Orissa and Assam, the salaries were lower. Assam gave the lowest salaries. It gave Rs. 4,000 to its Chief Justice and Rs. 3,500 to every other Judge. Now, this is the scale of salary that has been proposed for the Judges of all the High Courts in the Constitution.

In the amendment placed before us by Dr. Ambedkar the salaries of the President and the Governors have been raised. The salary of the President has been very nearly doubled, and that of the Governors has been increased by Rs. 1,000 a month, but the salaries of the Judges of the Supreme Court and of the High Courts have been retained at the figures mentioned in the Draft Constitution. Only one exception has been made and that is in the case of permanent judges of the provincial High Courts. The amendment says that any Person appointed permanently as a Judge of a High Court in any province before the 31st Day of October 1948 and becoming a Judge of the High Court at the commencement of this Constitution in the corresponding State under clause (1) of article 310 of this Constitution shall be entitled to the same condition of service as respects salary, leave and pension as he was entitled to before the commencement of this Constitution. An amendment has now been proposed, that the special provision made for persons appointed permanently before the 31st day of October 1948 should be deleted. I take it that an exception has been made in the case of persons who will be appointed permanently as judges of High Courts before 31st October 1948, broadly speaking, to bring the provision into line with Section 10 of the Independence Act, 1947. That Section entitled all persons appointed by the Secretary of State or the Secretary of State in Council to the civil services of the Crown in India and all permanent judges of the Supreme Court and the High Courts to the same conditions of service, and other rights as they could enjoy under the Government of India Act, 1935. Dr. Ambedkar's amendment, however, differs in certain respects from the provisions of Section 10 of the Independence Act. The Independence Act gave a guarantee only in respect of those persons who had been appointed as permanent judges before the 15th August 1947. Dr. Ambedkar's amendment extends this right to persons appointed up to the 31st October, 1948. The amendment thus goes beyond the provisions of Section 10 of the Independence Act. But in one respect it fails to carry out the provisions of that Section. That Section laid down that a person appointed permanently as a judge of a High Court, whether in the same province in which he was serving as a temporary or additional judge or in any other province, would be entitled to the same conditions of service and privileges that he was entitled to before the 15th of August

1947. In respect of the persons appointed to the civil services by the Secretary of State or the Secretary of State in Council the obligations created by the Independence Act have been fully carried out but the guarantees relating to the judges of High Courts have not been respected in one respect which I have already dealt with.

I think therefore that the amendment moved by Mr. Prabhu Dayal Himatsingka deserves to be favourably considered. A man may have been appointed as a judge, say, of the U.P. High Court some time ago. But he may, before the 31st October 1948, become the Chief Justice of, say, the Patna High Court. He will not, in that case, be entitled to receive Rs. 5,000 per mensem as his salary. It seems that in accordance with Dr. Ambedkar's amendment, he will be entitled to receive only Rs. 4,000, which is the same salary that he was entitled to receive before his transfer from the U.P. to Patna. This does not seem to me to be at all desirable. If you want to make an exception in the case of persons appointed as permanent judges before 31st October 1948, then carry out the guarantee that you mean to give not merely in the letter but also in the spirit. Once you have appointed a man permanently as a judge of a High Court, he can look forward to promotion of his work is satisfactory. Every judge of course cannot become a Chief Justice or a Judge of the Supreme Court, but some judges can and I see no reason why the judges who have been promoted because of their merit should be debarred from the benefit of the guarantee given under Section 10 of the Government of India Act.

As regards the future judges, Dr. Ambedkar referred to the salaries given in the United States, Australia, Canada and South Africa to the judges of the High Courts. He said, I believe, that with the exception of the United States, no country gave its judges more than India. If he said so, he must have forgotten that in England the judges of the High Court receive a higher salary than the judges of any High Court in India. We may, broadly speaking, say that with the exception of the United States and England, none of the countries mentioned by Dr. Ambedkar gave its judges higher salaries than India did.

I do not know what the pensions of the judges in Canada, South Africa and Australia are. But we have to take these rights into consideration in determining the salaries of the judges. In the United States of America, the pension of a judge of the Supreme Court is, I understand, equal to his salary. In England, the pension of a judge of the High Court is 70 per cent. of his salary. Under the Government of India Act, 1935, roughly speaking, the pension of a judge who has served for twelve years will be about one-third of his annual salary. Whatever justification there may have been for this when the Government of India Act was passed it is obvious, that the judges of the High Courts should be given higher pensions now. I was not able to hear all that Dr. Ambedkar said but I did not hear him refer to this question at all in his speech. The memorandum sent by the judges of the Supreme Court and the Chief Justices of the various High Courts in India deprecates a reduction in the salaries and gives it as the opinion of the judges that, the age of retirement of the judges and their pensions should be raised. The salaries have been reduced and the age of retirement has not been raised, but the pensions can still be raised. The judges of the High Courts and of the Supreme Court will occupy very responsible positions; they will, so to say, be the guardians of the Constitution. It is necessary therefore that their salaries and conditions of service and their position should be such as to command the respect of the people and to enable them to discharge their duties without any anxiety with regard to the maintenance of themselves and their families. I am personally in favour of the amendments moved by Mr. Naziruddin Ahmad regarding the salaries of the judges of the Supreme Court and those of the High Courts. But whatever

[Pandit Hirday Nath Kunzru]

the decision of the House on that point may be I think that if the reduction in the salaries is to be justified from any point of view it is imperatively necessary that the pensions of the judges both of the Supreme Court and of the High Courts should be raised. I do not know what my honourable Friend Dr. Ambedkar feels on this point but I shall be surprised if even he does not think that the present pensionary provisions require to be changed. I think that the judges of the Supreme Court and the High Courts should be allowed to draw, say, two-thirds of their salaries as pension.

Mr. President : So far as pension is concerned, may I point out that this is only an interim provision until the Parliament makes another provision? It is a matter left over for Parliament to consider.

Pandit Hirday Nath Kunzru : This is quite true but I should have liked my honourable Friend Dr. Ambedkar, when he explained his amendment, to refer to this matter too. I know that a law will have to be passed by Parliament fixing the pensions of the judges, but if responsible persons here—and no one is in a more responsible position than the Chairman of the Drafting Committee today—were to express the opinion that the pensions ought to be increased and ought to be at least two-thirds of the salaries, I am sure this will carry weight with Parliament. But if the matter is left in the air, if no person to whose opinion Parliament may be expected to attach weight refers to it and leaves honourable Members to imagine that the present pensionary provisions require no change, it is very doubtful whether Parliament would be inclined to pass any law increasing the pensions.

This is my justification, Sir, for having referred to this question. I do not however wish to prolong this discussion any further. I do not think that there is the slightest chance of any amendment being accepted by the Drafting Committee. We all know the course that the discussions in this House have taken during the last two years. Broadly speaking no amendment, however reasonable, had a fair chance of being accepted by the Drafting Committee, but I do hope that even the Chairman of the Drafting Committee will not consider it inconsistent with his dignity to say that in his opinion the pensions of the judges of the Supreme Court and the High Courts should be raised.

Shri L. Krishnaswami Bharathi (Madras: General): Sir, the question be put.

Mr. President : The question is:

“That the question be now put.”

The motion was adopted.

The Honourable Dr. B. R. Ambedkar : Sir, all I wish to say is that there are three points which have been raised and which require some reply. Mr. Kamath attacked the provision in Schedule II allowing the judges of the Supreme Court a free house. This question of providing for a house in the Constitution for the judges of the Supreme Court was decided upon after careful consideration. It was felt that a large number of judges who would be appointed to the Supreme Court would be coming from the far ends of this country to the capital city and that it would not be proper to throw them on their own resources to find a house which would be in keeping with the dignity of their office. That was the principal reason why the Drafting Committee felt that the Government should have the obligation to provide a house.

With regard to the question of the house being free of rent, we thought that that was a sort of compensation for the reduction in the salaries of the Supreme Court judges, which we had proposed in comparison with the salaries of the judges of the Federal Court. Personally I was somewhat surprised at

the derisive remarks made by my honourable Friend Mr. Kamath on this particular point, because if he is objecting to a free house to anybody I should have expected him to say something about the free house which we provide both for the President as well as for the Governor-General and I personally

Shri H. V. Kamath : I did not refer to rent and I do not know whether it is a free house or not.

The Honourable Dr. B. R. Ambedkar : I do not think there is any substance in this particular point made by Mr. Kamath.

With regard to the question of the amount of salaries there have been a variety of views expressed in the House. My Friend Mr. Shibban Lal Saksena went to the length of saying that the President ought not to get more than one rupee. Well, I suppose, on that remuneration no one would be available to function as the President, except a wandering Sanyasi, and I have no doubt that a wandering Sanyasi would be the most unfit person to be the President of the Union, whatever may be his other virtues.

With regard to the judges' salary two questions have been raised. There are some here in this House who have said that the judges' salaries should be at a higher level than what is fixed in the Schedule. There are others who have said that the standard of salary we have fixed has no relation to the capacity of the country to pay. In my judgement, the slogan that anything that we could fix in this country should have relation to the income of the people is a good piece of political slogan, but I am not prepared to say that it is practical politics. Salaries in this country, as well as in every other country, most depend upon the law of supply and demand. Unfortunately or fortunately, there are any number of people who can be found suitable to function as Members of the Legislature, consequently we fix their salaries at a much lower level. Fortunately or unfortunately, the supply of persons who can function as judges is very limited. I do not propose to say that it is a rarity. But certainly it is a very difficult commodity to obtain and consequently we are required to pay the market price. I am sure that in my judgment the salary fixed in this Schedule conforms to what might be called the market price. Therefore, I do not think that there can be any serious quarrel on the level of salary that we have fixed.

Then I come to the amendment moved by my friend, Mr. Himatsingka. I should like to say that he and I have the same case in mind and I have the greatest sympathy for the case he has in mind. But what he wants to do is to ask me to accept a general proposition, that is to say, a proposition saying "any judge appointed in any territory mentioned in Part I". I think it is not desirable to introduce in these clauses an amendment in general terms, for the simple reason that after the 31st October 1948, having regard to the provisions of our Constitution, there can be no distinction in the salary of judges on a provincial basis. All judges have been placed on the same basis irrespective of the High Court of the area within which that High Court is situated. Therefore, a general provision to remove any anomaly is not necessary because such an anomaly is not likely to recur. The anomaly exists because in the Government of India Act certain provisions with regard to the salary of judges did make a distinction between province and province. What I would like to tell my Friend is this; that the Drafting Committee hopes that this particular case will be provided for in another manner. If that happened there would be no necessity of adopting this particular amendment and the individual affected thereby would also be benefited. But if the Drafting Committee finds that that does not happen, then the Drafting Committee will reserve to itself the right of bringing in a specific amendment to remove the grievance of the specific individual we have in mind.

[The Honourable Dr. B. R. Ambedkar]

Before I close, I would like to ask your permission to introduce one or two phrases in the clause which have been inadvertently omitted. I refer to Part IV, paragraph I I sub-paragraph (2). I would like to introduce after the word "shall" in the seventh line the following words :

"In addition to the salaries specified in sub-paragraph (1) of this paragraph."

I have also another amendment in sub-paragraph 3 of paragraph II. I would omit the first "such" and after the word "judge" I would add:

"of the High Court."

Shri H. V. Kamath : That is my amendment.

The Honourable Dr. B. R. Ambedkar : I accept it, and I now hope the House will accept the Schedule as amended.

Shri R. K. Sidhwa : What about my amendment regarding the salaries and allowances of the president and the Governor?

The Honourable Dr. B. R. Ambedkar : That will be decided by Parliament.

Mr. President : I shall now put the amendments to the Schedule according to the Parts. We are now on Part I of the Schedule.

The question is :

"That in amendment No. 207 of List VI (Second Week), in paragraph I of the proposed Part, I, before the figure '10,000' and before the figure '5,500' the words 'not more than' be inserted."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 207 of List VI (Second Week), in paragraph I of the proposed Part I, for the figure and word '10,000 rupees' the figure and word '1 rupee' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 207 of List VI (Second Week), in paragraph 1 of the proposed Part I, the following be added after the figures relating to salaries of President and Governor, in parenthesis :-

'The salaries of the President and the Governor shall be subject to income-tax.'

The amendment was negatived.

Mr. President : The question is

'That in amendment No. 207 of List VI (Second Week), for paragraph 2 and 3 of the proposed Part I, the following be substituted :-

'There shall be paid to the President and to the Governor the following allowance :

'The President shall draw a lump sum of Rs. 135,000 per annum which shall include the cost of renewal, repair and maintenance of furniture and motor vehicles, also including sumptuary, contract and all other allowances.'

'The President shall also draw Rs. 10,000 per annum as touring expenses.'

'The Governor shall draw lump sum of Rs. 15,000 per annum which shall include the cost of renewal repair and maintenance of furniture and motor vehicles, also including sumptuary, contract and all other allowances.'

'The Governors shall also draw Rs. 7,000 per annum as touring expenses.'

The amendment was negatived.

Mr. President : There is no amendment to Part II. I come to Part III—amendment No. 264.

The question is

“That with reference to amendment No. 210 of list VI (Second Week), for paragraph 8 of Part III, the following be substituted :—

- ‘8. There shall be paid to the Speaker and the Deputy Speaker of the provisional Parliament, such salaries and allowances as were payable to the Speaker and the Deputy Speaker of the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution.’”

The amendment was negatived.

Mr. President : I now come to Part IV—amendment 265.

The question is :

“That in amendment No. 211 of List VI (Second Week), in the proposed Part IV, in Paragraph (1) of Paragraph 10,—

- (i) for the figure ‘5,000’ the figure ‘6,000’ be substituted; and
(ii) for the figure ‘4,000’ the figure ‘5,000’ be substituted.”

The amendment was negatived.

Mr. President : Part (iii) of amendment 267 was not moved. So I shall put the first two parts to the House.

The question is :

“That in amendment No. 211 of List VI (Second Week), in the proposed Part IV, in sub-paragraph (3) of paragraph 10,—

- (i) for the words and figure ‘thirty-first day of October, 1948’ the words ‘commencement of this Constitution’ be substituted;
(ii) for the words ‘the commencement of this Constitution’ the words ‘such commencement’ be substituted.”

The amendment was negatived.

Mr. President : The question is :

“That in amendment No. 211 of List VI (Second Week), in the proposed Part IV, in sub-paragraph 11,—

- (i) for the figure ‘4,000 the figure ‘5,000’ be substituted; and
(ii) for the figure ‘3,500 the figure ‘4,000’ be substituted.”

The amendment was negatived.

Mr. President : The question is :

That amendment No. 211 of List VI (Second Week), in the proposed Part IV, in sub-paragraph (2) of paragraph 11,—

- (i) for the words and figure ‘thirty-first day of October, 1948’ the words ‘comment of this Constitution’ be substituted;
(ii) for the words ‘the commencement of this Constitution’ the words ‘such commencement’ be substituted.”

The amendment was negatived.

Mr. President : The third part to amendment 270 was the one accepted by Dr. Ambedkar. As it is, the third part reads :

“In sub paragraph (2) of paragraph 11 in proposed Part IV of the schedule, after the words ‘specified in sub-paragraph 4 (1) of this paragraph, shall’ add the words ‘in addition to the salary specified in sub-paragraph (1) of this paragraph’.”

The Honourable Dr. B. R. Ambedkar : I would like to have my own words.

Mr. President : I think the wording is the same.

Pandit Hirday Nath Kunzru : Is Dr. Ambedkar entitled to move an amendment after the closure has been accepted ?

Mr. President : There is no difference between what Dr. Ambedkar has said and Mr. Naziruddin Ahmad's wording.

Mr. President : The question is :

“That in amendment No. 211 of List VI (Second Week), in the proposed Part IV, in sub-paragraph 2 of paragraph 11 in the seventh line after the word ‘shall’ the following be added :

‘in addition to the salaries specified in sub-paragraph I of this paragraph.’ ”

The amendment was adopted.

The President : The question is :

“That in amendment No. 211 of List VI (Second Week), in the proposed Part IV, in item (ii) of sub-paragraph (b) of paragraph 12, the words ‘excluding any time during which the judge is absent on leave’ be deleted.’ ”

The amendment was negatived.

Mr. President : The question is :

“That in amendment No. 10 of List I (Second Week), in the proposed Part IV, in Paragraph 10,—

- (i) in sub-paragraph (1) , for the figures ‘5,000’ and ‘4,000’, the figures ‘3,000’ and 2,000’ be substituted respectively; and
- (ii) in sub-paragraph (2) for the word ‘without’ the word ‘on’ be substituted.”

The amendment was negatived.

Mr. President : The question is :

“That in amendment No. 10 of the List I (Second Week), in the proposed Part IV, subparagraph (3) of paragraph 10 be deleted.”

The amendment was negatived.

Mr. President : The question is :

“That in amendment No. 10 of List I (Second Week), in the proposed Part IV, subparagraph (2) of paragraph 11, be deleted.”

The amendment was negatived.

The President : The question is :

“That in amendment No. 10 of List I (Second Week), in the proposed Part IV. in subparagraph (3) of paragraph I 1, for the words ‘Every such judge’ the words ‘Every judge of a High Court’ be substituted.”

The amendment was adopted.

Mr. President : The question is :

“That for Part I of the Second Schedule, the following be substituted :—

‘PART I

PROVISIONS AS TO THE PRESIDENT AND THE GOVERNORS OF STATES
FOR THE TIME BEING SPECIFIED IN PART I OF THE FIRST SCHEDULE

1. There shall be paid to the President and to the Governors of the States for the time being specified in Part I of the First Schedule the following emoluments *per mensem*, that is to my :—

The President	10,000 rupees.
The Governor of a State	5,500 rupees.

2. There shall also be paid to the President and to the Governors such allowances as were payable respectively to the Governor-General of the Dominion of India and to the Governors of the corresponding Provinces immediately before the commencement of this constitution.

3. The President and the Governors throughout their respective terms of office shall be entitled to the same privileges to which the Governor-General and the Governors of the corresponding Provinces were respectively entitled immediately before the commencement of this Constitution.

4. While the Vice-President or any other person is discharging the functions of, or is acting as, President, or any person is discharging the functions of the Governor, he shall be entitled to the same emoluments, allowances and privileges as the President or the Governor whose functions he discharges or for whom he acts, as the case may be.' ”

The amendment was adopted.

Mr. President : The question is :

“That in the heading in Part II, after the word and figure ‘Part I’ the words and figure ‘or Part III’ be inserted.”

The amendment was adopted.

Mr. President : The question is :

“That for paragraph 7, the following paragraph be substituted:—

‘7. There shall be paid to the ministers for any State for the time being specified in Part I or Part III of the First Schedule such salaries and allowances as were payable to such ministers for the corresponding Province or the corresponding Indian State, as the case may be, immediately before the commencement of this Constitution.’ ”

The amendment was adopted.

Mr. President : The question is :

“That in paragraph 8, for the words ‘respectively to the Deputy President of the Legislative Assembly and to the Deputy President of the Council of State immediately before the fifteenth day of August, 1947’ the words ‘to the Deputy Speaker of the Constituent Assembly of the Dominion of India immediately before such commencement, be substituted.”

The amendment was adopted.

Mr. President : The question is :

“That for Part IV of the Second Schedule, the following be substituted :—

PART IV

PROVISIONS AS TO THE JUDGES OF THE SUPREME COURT AND OF
THE HIGH COURTS OF STATES IN PART I OF THE FIRST SCHEDULE

(1) There shall be paid to the judges of the Supreme Court, in respect of time spent on actual service, salary at the following rates *per mensem*, that is to say:—

The Chief Justice	.....	5,000 rupees.
Any other judge	.....	4,000 rupees.

Provided that if a judge of the Supreme Court at the time of his appointment is in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or any of its predecessor Governments or under the Government of a State or any of its predecessor Governments, his salary in respect of service in the Supreme Court shall be reduced by the amount of that pension.

(2) Every judge of the Supreme Court shall be entitled without payment of rent to the use of an official residence.

(3) Nothing in sub-paragraph (2) of this paragraph shall apply to a judge who was appointed as a judge of the Federal Court before the thirty-first day of October, 1948, and has become on the date of the commencement of this Constitution a judge of the Supreme Court under clause (1) of article 308 of this Constitution, and every such judge shall in addition to the salary specified in sub-paragraph (1) of this paragraph be entitled to receive as special pay an amount equivalent to the difference between the salary so specified and

[Mr. President]

the salary which was payable to him as a judge of the Federal Court immediately before such commencement.

(4) Every judge of the Supreme Court shall receive such reasonable allowances to reimburse him for expenses incurred in travelling on duty within the territory of India and shall be afforded such reasonable facilities in connection with travelling as the President may from time to time prescribe.

(5) The rights in respect of leave of absence (including leave allowances) and pension of the judges of the Supreme Court shall be governed by the provisions which, immediately before the commencement of this Constitution, were applicable to the judges of the Federal Court.

11. (1) 'There shall be paid to the judges of the High Court of each State for the time being specified in Part I of the First Schedule, in respect of time spent on actual service, at the following rates *per mensem*, that is to say :—

The Chief Justice	.....	4,000 rupees.
Any other judge	.....	3,500 rupees.

(2) Every person who was appointed permanently as a judge of a High Court in any Province before the thirty- first day of October, 1948, and has on the date of the commencement of this Constitution become a judge of the High Court in the corresponding State under clause (1) of article 310 of this Constitution, and was immediately before such commencement drawing a salary at a rate higher than that specified in sub-paragraph (1) of this paragraph, shall in addition to the salary specified in sub-paragraph I of this paragraph be entitled to receive as special pay an amount equivalent to the difference between the salary so specified and the salary which was payable to him as a judge of the High Court immediately before such commencement.

(3) Every judge of the High Court shall receive such reasonable allowances to reimburse him for expenses incurred in travelling on duty within the territory of India and shall be afforded such reasonable facilities in connection with travelling as the President may from time to time prescribe.

(4) The rights in respect of leave of absence (including leave allowances) and pension of the judges of any such High Court shall be governed by the provisions which, immediately before the commencement of this Constitution, were applicable to the judges of the High Court of the corresponding Province.

12. In this Part unless the context otherwise requires,—

- (a) the expression "Chief Justice" includes an acting Chief Justice, and a "Judge" includes an *ad hoc* judge;
- (b) "actual service" includes—
 - (i) time spent by a judge on duty as a judge or in the performance of such other functions as he may at the request of the President undertake to discharge;
 - (ii) vacations, excluding any time during which the judge is absent on leave; and
 - (iii) joining time on transfer from a High Court to the Supreme Court or from one High Court to another.' "

The amendment was adopted.

Mr. President : The question is :

"That the Second-Schedule, as amended, stand part of the Constitution."

The motion was adopted.

The Second Schedule, as amended, was added to the Constitution.

Shri H. V. Kamath : Mr. President, will you be able to throw some light on the length of this session ?

Mr. President : It all depends upon you. I do not mean you particularly; I mean the House. So I think we have to meet again in the afternoon. We shall sit at four o'clock. The House stands adjourned, up to 4 o'clock.

An Honourable Member : We shall meet from four to six o'clock.

Mr. President : That we shall see.

The Assembly then adjourned for Lunch till Four of the Clock in the afternoon.

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

DRAFT CONSTITUTION—(Contd.)

Part VI-A

Mr. President : We shall now take up Part VI-A.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

“That after Part VI, the following new Part be inserted :—

PART VI-A

THE STATES IN PART III OF THE FIRST SCHEDULE

211 A. The provision of Part VI of this Constitution shall apply in relation to the States for the time being specified in Part III of the First Schedule as they apply in relation to the States for the time being specified in Part I of that Schedule subject to the following modifications and omissions, namely :—

- (1) For the word “Governor” wherever it occurs in the said Part VI, except when it occurs for the second time in clause (b) of article 209, the word “Rajpramukh” shall be substituted.
- (2) In article 128, for the word and figure “Part I” the word and figure “Part III shall be substituted.
- (3) Articles 131, 132 and 134 shall be omitted.
- (4) In article 135,—
 - (a) in clause (1), for the words, “be appointed” the word “becoms” shall be substituted;
 - (b) for clause (3). the following clause shall be substituted, namely:—

“(3) The Rajpramukh shall be entitled without payment of rent to the use of his residences, and there shall be paid to the Rajpramukh such allowances as the President may, by general or special order, determine.”;
 - (c) in clause (4), the words ‘emoluments and’ shall be omitted.
- (5) In article 136, after the words “senior-most judge of that court available” the words or in such other manner as may be prescribed in this behalf by the President’ shall be inserted.
- (6) In article 144, the Proviso to clause (1) shall be omitted.
- (7) In article 148, for clause (1) the following clause shall be substituted, namely:—

“(1) For every State there shall be a Legislature which shall consist of the Rajpramukh and—

 - (a) in the State of Mysore, two Houses;
 - (b) in other States, one House.”
- (8) In article 163, for the words “as are specified in the Second Schedule” the words, “as the Rajpramukh may determine” shall be substituted.
- (9) In article 170 for the words “as were immediately before the date of commencement of this Constitution applicable in the case of members of the Provincial Legislative Assembly for that State” the words “as the Rajpramukh may determine” shall be substituted.

- (10) In clause (3) of article 177—
- (a) for sub-clause (a), the following sub-clause shall be substituted, namely :—
“(a) the allowances of the Rajpramukh and other expenditure relating to his office as determined by the President by general or special order;”
 - (b) after sub-clause (c), the following sub-clause shall be inserted, namely :—
“(ce) in the case of the State of Travancore-Cochin, a sum of fifty-one lakhs of rupees required to be paid annually to the Devaswom fund under the covenant entered into before the commencement of this Constitution by the Rulers of the Indian States of Travancore and Cochin for the formation of the United States of Travancore and Cochin;”
- (11) In article 183, for clause (2), the following clause shall be substituted, namely:—
- “(2) Until rules are made under clause (1) of this article, the rules of procedure and standing orders in force immediately before the commencement of this Constitution with respect to the Legislature for the State or, where no House of the Legislature for the State existed, the rules of procedure and standing orders in force immediately before such commencement with respect to the Legislative Assembly of such Province, as may be specified in this behalf by the Rajpramukh of the State, shall have effect in relation to the Legislature of the State subject to such modifications and adaptations as may be made therein by the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, as the case may be.”
 - (12) In clause (2) of article 191, for the word “Province” the words “Indian State” shall be substituted.
 - (13) For article 197, the following article shall be substituted, namely:—
“197. The judges of each High Court shall be entitled to such salaries and allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by the President after consultation with the Rajpramukh:
‘Salaries, etc., of Judges. in respect of leave of absence and pension as may from time to time be determined by the President after consultation with the Rajpramukh:
Provided that neither the salary of a judge nor his rights in respect of leave, of absence or pension shall be varied to his disadvantage after his appointment.

I think I will move the other amendments afterwards.

As will be seen, the underlying idea of this Part is that Part VI of this Constitution which deals with the Constitution of the States will now automatically apply under the provisions of article 21-A to States in Part III. But it is realized that in applying Part VI to the Indian States which will be in Part II there are special circumstances for which it is necessary to make some provision and the purpose of this particular amendment 217 is to indicate those particular articles in which these amendments are necessary to be made in order to deal with the special circumstances of the States in Part III. Otherwise the States in Part III so far as their internal constitution is concerned will be on a par with the States in Part I.

Mr. President : Shall we have the amendments ?

Shri K. M. Munshi (Bombay : General) : May I read the Statement

Mr. President : After the amendments are moved. Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : Mr. President, I will move Nos. 237 and 238, but a consequential amendment in the body of the Constitution would be necessary and I have suggested that in amendment No. 254. I beg to move :

“That in amendment No. 217 of List VII (Second Week), in the proposed new article 211-A. for the word ‘modifications’ the words ‘adaptations, modifications’ be substituted.”

I also move:

“That in amendment No. 217 of List VII (Second Week),—

- (i) in item (3) of the proposed article 211 A, for the words ‘shall be omitted’ the words ‘shall not apply to this part’ be substituted;
- (ii) in item (4) of the proposed article 211 A, in paragraph (a), after the words ‘in clause (1)’ the words ‘for the time being specified in the First Schedule’ be omitted and be inserted.”

[Mr. Naziruddin Ahmad]

I also move 254 as consequential amendment to the acceptance of Part II of amendment 238. I move :

“That in clause (1) of article 135, the words ‘for the time being specified in the First Schedule’ be deleted.”

Sir, with regard to the scheme of article 21 I-A, I submit that the Drafting Committee has resorted to a kind of short-cut. They have merely adapted the articles applying to the Provinces so as to suit them to the purposes of the Indian States. Instead of this process they should have re-written the articles absolutely anew. There are many provisions which are similar to the Provinces and the Centre. If the process of adaptation was carried on like this, many provincial articles might have been adapted by a single section like this. In this process, there is a danger of overlooking a large number of anomalies and it is difficult to say what anomaly remains even after the adaptation. I submit that if possible these articles as adapted should be re-written as different independent Part altogether. That is a suggestion which I hope the Drafting Committee will consider.

My first amendment relates to the body of article 211-A. It says that Part III of the First Schedule, *viz.*, the provisions of Part VI shall be accepted subject to the following “modifications and omissions”. I wanted to make it read ‘adaptations, modifications and omissions’. The word ‘adaptation’ seems to me to be very appropriate. What we are doing is to adapt provisions applying to the Provinces to make them suitable for the Indian States. So these are really not mere modifications and omissions but really and essentially they are adaptations. That is why the word “adaptation” is particularly suitable in the context and should be accepted.

Then, Sir, as to the next amendment, it is also of a drafting nature. I shall merely indicate it and leave it to the Drafting Committee to consider the matter. It is in item 3. It is said that “articles 131, 132 and 134 shall be omitted”. Instead of that it would be better to say that these articles “shall not apply to this Part”. That is to say, articles 131, 132 and 134 shall not apply to Part VI-A which is under consideration. This is of a drafting nature and I should leave it to the Drafting Committee to consider.

The next amendment, to my mind, is a matter of some importance. It relates to the adaptations of article 131, clause (1). It, I mean the original article, says that the Governor shall not be a member of either House of Parliament or of a House of the Legislature of any State for the time being specified in the First Schedule. We want to adapt it to apply to the Rajpramukhs. As so adapted, it would read that the Rajpramukh shall not be a member of either House of Parliament or a House of the Legislature of the State for the time being specified in the First Schedule. I submit that as the time when this original article was drafted, the picture of the Indian States was rather vague, and therefore, we concentrated ourselves on phraseology applicable to the Provinces, namely, “the States for the time being in the First Schedule”. I submit that the Rajpramukh should not only be not a member of either House of Parliament or of the States for the time being specified in the First Schedule, but also not a member of the legislature of any State for the time being specified in the Third Schedule. What I mean to say is that the working should be such that.....

The Honourable Shri K. Santhanam (Madras : General) : The honourable Member is confusing the Part I of the First Schedule with the First Schedule. The First Schedule includes all the States.

Mr. President : Specified in the First Schedule, and not Part I of the Schedule.

Mr. Naziruddin Ahmad : I am grateful to Mr. Santhanam for pointing it out. In that case, this amendment and amendment No. 254 would also be unnecessary.

Sir, these articles are coming in in absolutely huge numbers every morning and we have to consider them on the day they are received. With regard to the other amendments, they might be considered by the Drafting Committee.

(Amendment No. 239, List VIII, Second Week was not moved.)

Mr. President : Amendment No. 240—Mr. Sidhwa.

Shri R. K. Sidhwa : Sir, I move :

“That in amendment No. 217 of List VII (Second Week), in item (4) of the proposed article 211 A, in paragraph (b), the words ‘and such allowance shall be a charge on the revenues of the State’ be added at the end of the proposed clause (3).”

And there is a similar amendment, No. 241.

Sir, I move:

“That in amendment No. 217 of List VII (Second Week), in item 10 of the proposed article 211A, in paragraph (a) the words ‘and such expenditure shall be a charge on the revenues of the State’ be added at the end of the proposed sub-clause (a).”

The Honourable Shri K. Santhanam : Para. (10) is a charging section. If you read it with article 177, it will be seen that these allowances will be a charge. That is what Mr. Sidhwa wants.

Shri R.K. Sidhwa : My point is that it should not be a charge on the Union. As the Privy Purse is chargeable to the Union, I want to know whether the allowances are to be charged to the Union or the State. If it is charged to the State, then my amendment is not necessary.

The Honourable Shri K. Santhanam : Article 177 refers only to the Rajpramukhs.

Shri K.M. Munshi : It is only chargeable on the States.

Mr. President : If you refer to paragraph (1) it is covered by that. It says—

“In clause (3) of article 177 for sub-clause (a), the following sub-clause shall be substituted, namely:—

‘(a) the allowances of the Rajpramukh and other expenditure relating to his office as determined by the President by general or special order :’ ”

Shri R. K. Sidhwa : It does not indicate that it will be chargeable to the State.

The Honourable Shri K. Santhanam : The whole article 177 deals with it.

Shri R. K. Sidhwa : If it is now clear, I have no objection. If it is chargeable to the State, that is what I want.

Mr. President : Article 177 clause (3) covers it.

The Honourable Dr. B. R. Ambedkar : My amendment No. 10 covers it.

Shri R. K. Sidhwa : I see it now. Then there is another amendment No. 246, relating to the new article 235A. Will that come up later on ?

Mr. President : Yes. We now come to amendment No. 242—Shri Brajeshwar Prasad.

Shri Brajeshwar Prasad : Sir, I beg to move:

“That in amendment No. 217 of list VII (second week), in item (13) of the proposed article 211A, the words ‘after consultation with the Rajpramukh’ be deleted from article 197.”

Sir, I am opposed to the statutory obligation on the part of the President to consult the Rajpramukh. I know, in practice, the President will always consult the Rajpramukh. But if there is any statutory obligation, it means that the sphere of action of the President would be circumscribed. It will not be easily possible for any man to go counter to the advise tendered by the Rajpramukh. Therefore, Sir, I am in favour of the proposition that the authority of the President in this sphere should be unrestricted and unhampered. Sir, there is another reason why I am against the Rajpramukh. I want that all powers, as far as possible, should be vested in the hands of the President, which means in the hands of the Government of India. Being fundamentally opposed to federalism and provincial autonomy and being an advocate of a unitary State, I feel that powers should be vested, as far as this topic is concerned, in the hands of the President and the President alone.

Mr. President : There are two more amendments, notice of one of which has been given by Kaka Bhagwant Roy.

Kaka Bhagwant Roy : (Patiala and East Punjab States Union) Mr. President, Sir, I move :

“That in amendment No. 217 of List VII (Second Week), for paragraph (b) of item (4) of the proposed article 211A, the following be substituted:—

‘(b) for clause (3), the following clause be substituted; namely—

- (3) The Rajpramukh shall be entitled, without payment of rent to the use of his residences, and there shall be paid to the Rajpramukh such allowances as the President may, on consideration of the recommendation made by the Legislature of the State, by general or special order, determine.’ ”

Sir, the big allowances of the Rajpramukhs are to be a direct charge on the State revenues, and the State revenues are paid by the States people. So, the representatives of the people—I mean the State Legislatures—should have the right to discuss the allowances which are to be paid to the Rajpramukhs. You remember, Sir, that when we were discussing Schedule VII, I put up a similar kind of amendment and I was assured by Dr. Ambedkar that, when we took up the States Chapter, we shall surely consider over it. I think Dr. Ambedkar would be kind enough to consider over this amendment and accept it.

Prof. Shibban Lal Saksena : Mr. President, Sir, I beg to move:

“That in amendment No. 217 of List VII (Second Week), in paragraph (a) of item (10) of the proposed article 211A, for the words ‘the President by general or special order’ the words ‘Parliament by law’ be substituted.”

Mr. President : The copy that I have, reads—

“That in amendment No. 278 of List X (Second Week), in clause (1) of the proposed article 197, for the words ‘President after consultation with the Rajpramukh’ the words ‘Parliament by law’ be substituted.”

Prof. Shibban Lal Saksena : The amendment that I am moving is 288 of List XII.

Mr. President : I have just received it. You can move it.

Shri T. T. Krishnamachari : But that has not been moved.

The Honourable Dr. B. R. Ambedkar : How can you move it?

Prof. Shibban Lal Saksena : I am not moving the amendment which the President read out. I am moving No. 288 of List XII.

The Honourable Shri K. Santhanam : Before that there are amendments Nos. 276, 277 and 278 in List X.

Mr. President : We have not yet come to that. He may move that and then we shall take them up.

Prof. Shibban Lal Saksena : Here we are making provisions for allowances to be paid to the Rajpramukhs and we have said that these allowances shall be determined by the President by general or special order. Now, in the original article, the salary of the Governors is to be determined by Parliament, and I do not know why the allowances of the Rajpramukhs should not be determined by Parliament. In fact, the allowances should be fixed once for all and should not be varying. Therefore, I think that these allowances should be determined by Parliament and not by the President. They should not be liable to variation with every change of President. This is my amendment No. 288.

The Honourable Shri K. Santhanam : Mr. President, Sir, I move:

“That in amendment No. 217 of List VII (Second Week), in item (4) of the proposed article 211A for paragraph (b) the following, be substituted :—

‘(b) for clause (3), the following clause shall be substituted, namely—

- (3) Unless he has his own residence in the Capital of his State, the Rajpramukh shall be entitled to the use of an official residence without payment of rent, and there shall be paid to the Rajpramukh such allowances as the President may, by general or special order, determine.’ ”

The point of this amendment is that in the clause as originally drafted, the provision is that the Rajpramukh shall be entitled without payment of rent to the use of his residences; if there are his residences, certainly we need not make a constitutional provision that he is entitled to use them. It is only when he has to use some residence which is not his by right, the question of payment of rent arises. That is why I want to make the provision that only when a Rajpramukh has not got his own residence in his Capital, he should be entitled to the use of an official residence without payment of rent, and my amendment has been tabled accordingly. Sir, I beg to move :

“That in amendment No. 217 of List VII (Second Week), in item (13) of the proposed article 211 A, for article 197, the following be substituted :—

‘Salaries, etc. of Judges. 197. (1) There shall be paid to the judges of each High Court Such salaries as may be determined by the President after consultation with the Rajpramukh.

- (2) Every judge shall be entitled to such allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament and, until so determined, to such allowances and rights as may be determined by the President in consultation with the Rajpramukh:

Provided that neither the allowance of a judges nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment.’ ”

Sir, our attempt has been to bring the States as far into line with the provinces as possible. So far as salaries are concerned, it has been found necessary that the salaries of the High Court Judges in the States should differ at least for the present from those of the High Courts in the provinces. Therefore the President has been given the right under article 193 (7). The Parliament has been given power to fix the other allowances, and rights in respect of leave of absence and pensions. There is no justification why Parliament or Parliamentary legislation should not apply to the judges in the States High Courts as well. Therefore so far as clause (2) and the proviso are concerned, I have adopted the same language as in article 197 with the difference that to start with the allowances may be fixed by the President. In clause (1) I have given

[Shri K. Santhanam]

the President the right to fix the salaries of judges so that the new article 197 will follow the old article 197 as closely as it is possible and necessary to do so—

Shri H. V. Kamath : On a point of clarification, may I ask my honourable Friend Mr. Santhanam whether, in view of the fact that Rajpramukhs have been specifically exempted from payment of rent for their official residence, the article relating to the Governors also will be suitably amended ? That article does not exempt them specifically.

Mr. President : That question does not arise at this stage.

Shri H. V. Kamath : Governors and Rajpramukhs are on a par with each other.

Mr. President : That may be, but we are not dealing with Governors here.

The Honourable Shri K. Santhanam : I may add that the Rajpramukhs have generally their own residences in the capital and therefore no question of rent will arise.

Shri A. Thanu Pillai (Travancore & Cochin Union) : May I know from my honourable Friend, Mr. Santhanam, why he makes a distinction between salaries and allowances of High Court judges ?

Honourable Shri K. Santhanam : Because article 197 has made the distinction. It has fixed salaries in the Schedule II and made it unalterable by Parliament. But clause (2) of 197 makes the all owances and other rights in respect of leave, pension, etc., subject to parliamentary legislation. Because under 197 we have made the distinction. I am only trying to preserve the same distinction with respect to the States.

Shri H. R. Guruv Reddy (Mysore State): Mr. President, Sir, I move :

“That in amendment No. 217 of List VII (second week), in item (1) of the proposed article 211A, for the word ‘Rajpramukh’ the words ‘Maharaja, Nizam’ or the ‘Rajpramukh’ be substituted.”

Sir, it may be said that this matter would be explained elsewhere in the Constitution. But I feel that it is necessary.....

Shri T. T. Krishnamachari (Madras : General): May I point out that it is the intention of the Drafting Committee that this definition should be included in the definition clause 303 to which we propose to make amendments and if the honourable Member would wait, he will probably get an opportunity of putting these words as he wants them as an amendment to our proposal.

Shri H. R. Guruv Reddy : In that case, I will have it postponed. I shall move 287, I move:

“That in amendment No. 217 of List VII (Second Week), in paragraph (b) of item (4) of the proposed article 211A, in the proposed clause (3), for the words ‘payment of rent’ the words ‘any obligation’ be substituted.”

The use of the word “rent” looks as though it is belittling the rulers of the States. Therefore, I suggest the word “obligation” be introduced. Nothing else.

Prof. Shibban Lal Saksena : Mr. President. Sir, I beg to move:

“That in amendment No. 278 of List X (Second Week), in clause (1) of the proposed article 197, for the words ‘President after consultation with the Rajpramukh’ the words ‘Parliament by law’ be substituted.”

Amendment No. 278 was moved by my Friend, Mr. Santhanam. My object in moving this amendment is this. Already my honourable Friend from Travancore has raised the question, which Mr. Santhanam also answered. He said that

he was trying to conform to article 207 in List 7 of amendments now under discussion. I think that is no reason. I feel that salaries must be fixed. They must not be variable and it must not be for the President to fix them from time to time after consultation with the Rajpramukh. Whatever the salary, it is only proper that it should be fixed by the Parliament. The Parliament should be the ultimate authority. I am prepared to concede that during the transition period you may keep this clause, but if you want it permanently in the Constitution, these salaries must be fixed by the Parliament by law.

Shri Raj Bahadur (United States of Matsya) : In view of the statement made by Shri K. Santhanam I do not move Amendment No. 277.

Mr. President : These are all the amendments The article as well as the amendments are open to discussion.

The Honourable Sardar Vallabhbhai J. Patel (Bombay : General) : Sir, I have prepared a speech which I thought I would not be able to deliver because of the strain that it would cause me and I have requested Mr. Munshi to read it on my behalf. It gives a general resume of the origin of the amendments which have been proposed by Dr. Ambedkar. There are a large number of them about which it is necessary to explain how they came to be introduced. It is also necessary to give a general idea of the background of all these things. Therefore, if you will permit, I shall ask Mr. Munshi to read it.

Mr. President : Yes, Mr. Munshi may read it.

The Honourable Sardar Vallabhbhai J. Patel : *Sir it has been my endeavour to keep the House fully informed of our policy and the developments in respect of the States. Apart from the statements I have made on the floor of the House from time to time, I laid before the House in July last year a White Paper on States in which was set out in detail not only the policy pursued by the Government of India towards the States but also the various agreements and Covenants entered into with the Rulers were reproduced. In March last I placed before the House another detailed report on the policy and the working of the Ministry of States. Now that the process of integration of the States has been completed I propose to place before the House next month another State Paper which Will contain a comprehensive review of all the developments which have taken place in respect of the Indian States since this Government was called upon to face the problem of States.

The amendments which are now being proposed concerning the provisions of the Constitution applicable to the States, embody the results of the bloodless revolution which within a remarkably short period, has transformed the internal and external set up of the States. The fact that the new Constitution specifies only nine States in Part III of Schedule I is an index to the phenomenal progress made by the policy of integration pursued by the Government of India. By integrating 500 and odd States into sizeable units and by the complete elimination of centuries-old autocracies, the Indian democracy has won a great victory of which the Princes and the people of India alike should be proud. This is an achievement which should redound to the credit of any nation or people at any phase of history.

As the House is aware, when the States entered the Constituent Assembly, of India, it was thought that the Constitution of the States would not form part of the Constitution of India. It was also understood that unlike the Provinces the accession of the States to the Indian Union would not be automatic but would be by means of some process of ratification of the Constitution. In the context of those commitments and the conditions then obtaining certain

*The speech was read out by Shri K. M. Munshi.

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provisions were incorporated in the Draft Constitution, which placed the States in certain important respects on a footing different from that of the Provinces.

As a result of the policy of integration and democratization of States pursued by the Government of India since December 1947 the process of what might be described as 'unionisation' of States has been greatly accelerated. Two important developments in this direction have been the extension of the legislative authority of the Dominion over the States and the federal financial integration of the States. The States had originally acceded in respect of the three subjects of Defence, Foreign Affairs and Communications only. With the formation of the Unions the legislative power of the Dominion Parliament was extended in respect of the Unions of States to all matters specified in the Federal and Concurrent Lists except those relating to taxation. The content of the accession of the State of Mysore was also likewise extended.

The gap in the financial field has now been filled by the arrangements which have been negotiated, with the States on the basis of the recommendations made by the Indian States Finances Enquiry Committee. The fundamental basis of this scheme is that federal financial integration of the States is a necessary consequence of the basic conception underlying the new Constitution of the Union of India—that of Provinces and States as equal partners. The scheme, therefore, is based upon complete equality between the Provinces and States in the following respects :—

- (1) The Central Government should perform the same functions and exercise the same powers in States as in Provinces;
- (2) The Central Government should function through its own executive organisations in States as in Provinces;
- (3) There should be uniformity and equality in the basis of contributions to Central resources from Provinces and States;
- (4) There should be equality of treatment as between Provinces and States in the matters of common services rendered by the Central Government, and as regards the sharing of divisible federal taxes, grants-in-aid, 'subsidies', and all other forms of financial and technical assistance.

The fact that these far-reaching changes in our fiscal structure are being introduced with the full concurrence of the States is in itself a great tribute to the excellent work done by the Indian States Finances Enquiry Committee under the chairmanship of Sir V. T. Krishnamachari, who brought to bear on this important problem his vast experience in Indian States.

These important developments enabled us to review the position of the States under the new Constitution and to remove from it all vestiges of anomalies and disparities which found their way into the new Constitution as a legacy from the past.

When the Covenants establishing the various Unions of States were entered into, it was contemplated that the Constitutions of the various Unions would be formed by their respective Constituent Assemblies within the framework of the covenants and the Constitution of India. These provisions were made in the covenants at a time when we were still working under the shadow of the theory, that the assumption, by the Constituent Assembly of India, of the constitution-making authority in respect of the States would constitute an infringement of the autonomy of the States. As however, the States came closer, to the Centre, it was realised that the idea of separate Constitutions being framed for the different Constituent units of the Indian Union was a legacy

from the Rulers' polity and that in a people's polity there was no scope for variegated constitutional patterns. We, therefore, discussed this matter with the Premiers of the various Unions and decided, with their concurrence, that the Constitution of the States should also form an integral part of the Constitution of India. The readiness with which the legislatures of the three States in which such bodies are functioning at present, namely, Mysore, Travancore and Cochin Union and Saurashtra, have accepted this procedure, bears testimony to the wish of the people of the States to eschew the separatist trends of the past.

In view of these important developments it became necessary to recast a number of the provisions of the Constitution in so far as they related to the States. The amendments we are proposing have been examined by the Constitution-making bodies of Mysore, Saurashtra and Travancore and Cochin Union. Some of the modifications proposed by these bodies have been incorporated in the amendments tabled before the House. Others have been dropped as a result of the discussions I have had with the representatives of these Constituent Assemblies.

It is a matter of deep regret for me that it has not been possible for us to adopt a similar procedure for ascertaining the wishes of the people of the other States and Unions of States through their elected representatives. Unfortunately we have no properly constituted legislatures in the rest of the States; nor will it be possible to have legislatures constituted in them before the Constitution of India emerges in its final form. We have, therefore, no option but to make the Constitution operative in these States on the basis of its acceptance by the Ruler of the Rajpramukh, as the case may be, who will no doubt consult their Councils of Ministers. I am sure neither the honourable Members representing those States in this House nor the people of the States generally, would wish that the enforcement of the Constitution in these States should be held over until legislatures or constitution-making bodies are constituted in them. The legislatures of these States, when, constituted under the new Constitution, may propose amendments to the Constitution. I wish to assure the people of these States that any recommendations made by their first legislatures would receive our earnest consideration. In the meantime I have no doubt, that the Constitution framed by this House, where all the States except one are duly represented, will be acceptable to them.

In view of the special problems with which the Government of Jammu and Kashmir is faced, we have made a special provision for the continuance of the constitutional relationship of the State with the Union on the existing basis. In the case of Hyderabad State the acceptance of the Constitution will be subject to ratification by the people of the State.

As the House will see, in several respects the Constitution as it now emerges, is different from the original draft. We have deleted such provisions, as articles 224 and 225, which imposed limitations on the Union's legislative and executive authority in relation to States in the federal sphere. The entries in the legislative List, which differentiated between the States and Provinces have likewise been dropped. The legislative and executive authority of the Union in respect of the States will, therefore, be co-extensive with its similar authority in and over the Provinces. Subject to certain adjustments during the transitional period, the fiscal relationship of the States with the Centre will also be the same as that between the Provinces and the Centre. The jurisdiction of the Supreme Court will now extend to the States to the same extent as in the case of the Provinces. The High Courts of the States are to be constituted and will function in the same manner as the Provincial High Courts. All the citizens of India, whether residing in States or Provinces, will enjoy

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the same fundamental rights and the same legal remedies to enforce them. In the matter of their constitutional relationship with the Centre and in their internal set-up the States will be on a par with the Provinces.

I am sure the House will note with gratification the important fact that unlike the scheme of 1935, 'our new constitution is not an alliance between democracies and dynasties, but a really union of the Indian people built on the basic concept of the sovereignty of the people. It removes all barriers between the people of the States and the people of Provinces and, achieves for the first time the objective of a strong democratic 'Indian built on the true foundation of a co-operative enterprise on the part of the people of the Provinces and States alike.

As the House is acquainted with trends of developments affecting the States it is not necessary for me to explain to the House the various amendments which have been tabled. There are two or three matters, however, about which I should like to make a few observations.

One of these is the proposed article 306-B. As the House is aware, the States, as we inherited them, were in varying stages of development. In most cases the advance had to be made from the starting point of pure, 'autocracy. Having regard to the magnitude of the task, which confronted the Governments of the Unions in the transitional period, and to the fact that neither the Services inherited by them nor the political organisations, as they existed there, were in a position to assume, unaided, full responsibilities of the administration, we made a provision in some of the Covenants that till the new Constitution came into operation in these . Unions, the, Rajpramukh and the Council of Ministers shall, in the exercise of their functions, be under the general control of the Government of India and comply With the instructions issued by that Government from time to time. The stress of the transitional phase is likely to continue for some years. We are ourselves most anxious that the people of these States should shoulder their full responsibilities; 'however, we cannot ignore the fact that while the administrative Organisation and political institutions are to be found in most of the States in a relatively less developed state, the problems relating to the integration of the States and the change-over from an autocratic to a democratic order are such, as to test the mettle of long established administrations and experienced leaders of people. We have therefore, found it necessary that in the interest of the growth of democratic institutions in these States, no less than the requirements of administrative efficiency, the Government of India should exercise general supervision over the Governments of the States till such time as it may be necessary.

It is natural that a provision of this nature which treats States in Part III differently. from Part I States should cause some misgivings. I wish to assure the honourable Members representing these States, and through them the people of these States that the provision involves no censure of any Government. It merely provides for contingencies which, in view of the present conditions, are more likely to arise in Part III States than in the States of other categories. We do not wish to interfere with the day-to-day administration of any of the State. We are ourselves most anxious that the people of the States should learn by experience. This article is essentially in the nature of a safety-value to obviate recourse to drastic remedies such as the provisions for the breakdown of the constitutional machinery. It is quite obvious that in this matter the States, *e.g.*, Mysore and Travancore and Cochin Union where democratic institutions have been functioning for a long time and where Governments responsible to legislatures are in office, have to be treated differently from the States not conforming to these standars. In all these cases our

control will be exercised in varying degrees according to the requirements of each case. The proviso to the article gives us the necessary discretion to deal with each case on its merits.

I hope this statement which embodies our considered policy will allay any apprehension which the Governments of any of these States may have concerning this article.

Another matter about which I would like to remove misgivings is the proposed amendment to article 3. This amendment places the States in Part III on the same footing as the States in Part I in respect of territorial readjustments. The Constituent Assembly of Mysore recommended to us that the article as already adopted by this House, which provides for prior consent of Part III States before any proposals affecting their territories are placed before the House, should remain unaltered. We have not found it possible to agree to the suggestion for the simple reason that in such matters there should be no differentiation between Part I and Part III States. I, however take this opportunity of assuring the representatives of Mysore State that whether the article provides for consultation or consent of the legislature of the affected State, the wishes of the people cannot be ignored either by the Central Government or legislature. After all, we are a democracy; the main sanction behind us is the will of the people and we cannot act in disregard of public opinion.

I now come to the proposed article 267-A in respect of which some explanation is necessary. The Government of India have guaranteed to the Rulers of merged and integrated States payment of privy purses as fixed under the terms of the various Covenants and Agreements of Merger. Article 267-A give constitutional recognition to these guarantees and provides for this expenditure being charged on the Central Revenues subject to such recoveries as may be made from time to time from the Provinces and States in respect of these payments.

I shall first deal with the financial aspect of these arrangements. In the past, in most of the States there was no distinction between the expenditure on the administration and the Ruler's privy purse. Even where the Ruler's privy purse had been fixed no effective steps were taken to, ensure that the expenditure expected to be covered by the privy purse was not, directly or indirectly, charged on the revenues of the State. Large amounts, therefore, were spent on the Rulers and on the members of the ruling families. This expenditure has been estimated to exceed twenty crores of rupees per year.

All the agreements of merger and Covenants now provide for the fixation of the Ruler's privy purse which is intended to cover all the expenses of the Rulers and their families including the expenses of their residences, marriages and other ceremonies, etc. The privy purse guaranteed under these agreements is less than the percentage for the Deccan States under the award given by Dr. Rajendra Prasad, Shri Shankerrao Deo and Dr. Pattabhi Sitaramayya. It is calculated on the basis of 15 per cent. on the first lakh of average annual revenue of the State concerned ten per cent. on the next four lakhs and seven and a half per cent. above five lakhs, subject to a maximum of ten lakhs. The maximum figure of ten lakhs has been exceeded only in the case of some of the major States, which had been recognised as viable and the amounts fixed in such cases are payable during their life-time only. The total annual privy purse commitments so far made amount to about Rs. four and a half crores. When the amounts guaranteed to certain Rulers during their life-time are subsequently refixed the total annual expenditure in respect of privy purses will amount to less than Rs. four crores.

Under the terms of the Covenants and the agreements entered into by the Rules privy purses are payable to the Rulers, out of the revenues of the States

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concerned and payments have so far been made accordingly. During the of the discussions with the Indian States Finances Enquiry Committee, it urged by most of the States that the liability for paying privy purses of Rulers should be taken over by the Centre on the ground that—

- (a) privy purses have been fixed by the Centre;
- (b) privy purses are political in nature; and
- (c) similar payments are not made by the Provinces.

Apart from these considerations, the position has definitely changed since the execution of the Covenants. In the first place, so far as the merged States are concerned, with their total extinction under the new Constitution of India, as separate entities, the basis of liability for privy purse payments guaranteed to the Rulers of the States will undergo a change, in that the States, from the revenues of which privy purses are payable, would cease to exist. Secondly, the term “revenues of the State” has now to be viewed in the context of the federal financial integration of States. This integration involves a two-fold process; one, of ‘functional’ partition of the present composite State Governments, and the other of ‘merger’ of the partitioned ‘federal’ portions of the State Governments with the present Central Government. It follows, therefore, that when the federal financial integration becomes effective, the liability in respect of privy purse payments should strictly speaking be shared on an equitable basis by the functional successors to the Governments of merged and integrated States, that is, the Central Government, on the one hand, and the Governments of Provinces and States on the other. Having regard to all these factors, we have decided that the best course would be that these payments should constitute a charge on the Central revenues, but that, at the same time, provision should be made for the recovery of such contributions from the Governments of the States, during such transitional period and in such amounts as may be considered appropriate. These recoveries are to be made in accordance with the scheme for financial integration of the States.

I have already stated that the privy purse settlements made by us will reduce the burden of the expenditure on the Rulers to at least one-fourth of the previous figure. Besides, the States have benefited very considerably from the process of integration in the form of cash balances inherited by them from the Rulers. Thus, for instance, the Rajpramukh of Madhya Bharat alone has made over to the Union large sums of money yielding interest sufficient to cover a major portion of the total privy purses of the Rulers, who have joined this Union. So, far as the assumption of the part of the burden by the Centre is concerned, we must remember that this arrangement flows as a consequence of the financial integration of the States, which will have an effect of lasting character on the economy of this country. The fiscal unification of India will patch up the disruptive rents in the economy of India which rendered effective implementation of economic policies in the Provinces impossible. Thus, for instance, in the matter of income-tax evasion alone, which has been a serious matter in recent years the gains from federal financial integration will prove very substantial. From the financial point of view, therefore, the arrangements we have made are going to benefit very materially the economy of this country.

I shall now come to the political and moral aspect of these settlements in order to view the payments guaranteed by us in their correct perspective, we have to remember that they are linked with the momentous developments affecting the most vital interests of this country. These guarantees form part of the historic settlements which ensfire in them the consummation of the great ideal of geographical, political and economic unification of India, an ideal

which for centuries remained a distant dream and which appeared as remote and as difficult of attainment as ever even after the advent of Indian independence.

Human memory is proverbially short. Meeting in October, 1949, we are apt to forget the magnitude of the problem which confronted us in August, 1947. As the honourable Members are aware, the so-called lapse of paramountcy was a part of the Plan announced on June 3, 1947, which was accepted by the Congress. We agreed to this arrangement in the same manner as we agreed to the partition of India. We accepted it because we had no option to act otherwise. While there was recognition in the various announcements of the British Government of the fundamental fact that each State should link up its future with the Dominion with which it was geographically contiguous, the Indian Independence Act released the States from all their obligations to the British Crown. In their various authoritative pronouncements, the British spokesmen recognised that with the lapse of paramountcy, technically and legally the States would become independent. They even conceded that theoretically the States were free to link their future with whichever Dominion they liked although, in saying so, they referred to certain geographical compulsions, which could not be evaded. The situation was indeed fraught with immeasurable potentialities of disruption, for some of the Rulers did wish to exercise their technical right to declare independence and others to join the neighbouring Dominion. If the Rulers had exercised their right in such an unpatriotic manner, they would have found considerable support from influential elements hostile to the interests of this country.

It was against this unpropitious background that the Government of India invited the Rulers of the States to accede on three subjects of Defence, External Affairs and Communications. At the time the proposal was put forward to the Rulers, an assurance was given to them that they would retain the status quo except for accession on these subjects. It had been made clear to them that this accession did not also imply any financial liability on the part of the States—and that there was no intention either to encroach on the internal autonomy or the sovereignty of the States or to fetter their discretion in respect of their acceptance of the new Constitution of India. These commitments had to be borne in mind when the States Ministry approached the Rulers for the integration of their States. There was nothing to compel or induce the Rulers to merge the identity of their States. Any use of force would have not only been against our professed principles but would have also caused serious repercussions. If the Rulers had elected to stay out, they would have continued to draw the heavy civil lists which they were drawing before and in large number of cases they could have continued to enjoy unrestricted use of the State revenues. The minimum which we could offer to them as *quid pro quo* for parting with their ruling powers was to guarantee to them privy purses and certain privileges on a reasonable and defined basis. The privy purse settlements are therefore in the nature of consideration for the surrender by the Rulers of all their ruling powers and also for the dissolution of the States, as separate units. We would do well to remember that the British Government spent enormous amounts in respect of the Mahratta settlements alone. We are ourselves honouring the commitments of the British Government in respect of the pensions of those Rulers who helped them in consolidating their Empire. Need we cavil then at the small—purposely use the, word—small—price we have paid for the bloodless revolution which has affected the destinies of millions of our people.

The capacity for mischief and trouble on the part of the Rulers if the settlement with them would not have been reached on a negotiated basis was for greater than could be imagined at this stage. Let us do justice to them; let us

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place ourselves in their position and then assess the value of their sacrifice. The Rulers have now discharged their part of the obligations by transferring all ruling powers and by agreeing, to the integration of their States. The main part of our obligation under these agreements, is to ensure that the guarantees given by us in respect of privy purse are fully implemented. Our failure to do so would be a breach of faith and seriously prejudice the stabilisation of the new order.

In commending the various provisions concerning the States to the House I would ask the Honourable Members to view them as a coordinated over-all settlement of a gigantic problem. A particular provision isolated from its context may give a wholly erroneous impression. Some of us might find fault with what might appear as relics of the previous autocratic set up. I wish to assure Honourable Members that autocracy in the States has gone, and has gone for good. Let us not get impatient with any particular term which might remind us of the past. The form in which the Rulers find recognition in the new Constitution of India, in no way impairs the democratic set up of the States. The Rulers have made an honourable exist;- it now remains for the people to fill the breach and to derive full benefit from the new order.

I take the liberty to remind the House that at the Haripura Session the Congress in 1938 defined its objective in respect of the States as follows :—

“The Congress stands for the same political, social and economic freedom in the States as in the rest of India and considers the States as integral parts of India which cannot be separated. The Purna Swaraj or complete Independence, which is the objective of the Congress, is for the whole of India, inclusive of the States, for the integrity and unity of India must be maintained in freedom as it has been maintained in subjection. The only kind of federation that can be to the Congress is one in which the States participate as free units, enjoying the same measure of democratic freedom as the rest of India.”

I am sure the House will agree with me when I say that the provision which we are now placing before the House embody in them full achievement of that objective. (*Cheers*).

Mr. President : We shall now proceed with the further discussion of amendment No. 217 which Dr. Ambedkar has moved and the various amendments which have been moved to that amendment. If any Member wishes to say anything he can do so now.

Dr. B. Pattabhi Sitaramayya (Madras : General) : Mr. President Sir, on a previous occasion when I first spoke in this House I had stated that it was a sudden impulse that overtook me which draw me to the mike. I beg permission to repeat the same.

As I heard page after page, paragraph after paragraph, sentence after sentence of the masterly document that has been just now read to us. I felt exalted and transported to a new world of vision, a dream-land which we had in mind When we effected a compromise at Haripura, in terms of the resolution which, fortunately, has been recalled to your minds by being read verbatim. That was the result of a struggle between two sections, the more conservative and the more radical, which was ultimately brought about by the masterly Intervention of the present Home Minister and the Prime Minister and our revered Mahatmaji. It was in 1936 that I began to take direct and active interest in the affairs of the States because I felt that they, could not be kept apart from the provinces of India for any length of time and as I travelled from State to State and cleared thousands of miles by car, I felt that there was no natural partition between the States and the Provinces. They were not separated either by forests or jungles or deserts or rivers or mountain ranges but they were all of a piece with one another and only a toll

bar represented by a rope was the dividing line between the two areas and if you travel through Kathiawar which is now called Saurashtra with its 417 States, you cannot pass any two miles without changing over from State to, province and province to State. That was an impossible state of things. How it had come into being was unimaginable and there was no point in postponing the consideration of the amalgamation of the provinces and the States. That was how the Haripura Resolution was brought into existence and today we have the unique satisfaction that under the strategy and statesmanship of our Home Minister who is also the Minister for the States, it has been possible for him to bring about this unity in financial matters, in strategic matters, in matters of the army and above all, in matters of the Constitution.

All congratulations are due to the representatives of the States who are assembled here for the ready manner in which they have acceded to these suggestions. At first when we were engaged in the Negotiating Committee in February 1947, it looked to me as though it would be a miracle to bring the representatives of the various States into this House, but when these men who were not able to stand within a mile of the Palaces of the Princes were sitting side by side with them on equal terms, it was a pleasurable sight to witness, and from that day forward we have progressed from step to step and stage by stage until today we have about 92 of them represented in this House sitting on terms of equality and friendly comradeship with us all.

One point I would like to mention and that is the privy purse. When a palace is built especially in a clayey and slushy area which makes the foundations weak, more bricks are thrown into the foundations than are visible in the walls or on the facade. It is the facade that draws attention it is facade that is worked artistically, but the bricks are all thrown into the foundations never to be seen, but always bearing the burden of the mighty edifice that is visible above. That was the foundation that we had laid in trying to bring the sixteen Deccan States into one Union and this is the second occasion upon which the Home Minister, who is the Minister for the States, has made a direct reference to the names of three of us in respect of the propriety of the measure of the privy purse that has been granted to the princes. We had to do the spadework and we had to offer a bail to our princes, we had to draw them into the scheme of Union. All honour to those sixteen princes who had agreed to come into the Union for the first time at a time when neither unification nor unionisation was visualized or conceived. All honour to the Rajas of Phaltan, of Sangli, of Bhor and of Aundh who had taken the initiative in this matter and made it possible; on foundations which had to be well and truly laid and therefore more money had to be spent upon them, we had to give privy purses on a much larger scale. It was the fortunate privilege of the Minister for the States to build upon those foundations and negotiate, a much smaller privy purse and all honour to our Minister of States, for having made it almost the minimum.

Perhaps there is a feeling in the country and some friends who have no responsibility placed on them in regard to the administration of the State are fond of speaking somewhat disparagingly of the amount of privy purse that has been granted to our princes. Let it be made clear that there is no mistake made in granting these, which have been on the most moderate scale, and I am sure that as time passes perhaps the Princes themselves will feel that this kind of 'maintenance' life ill suits them. It is not the Princes that are so much the burden on the administration as the Jagirdars. Hyderabad has 1,200 Jagirdars, Gwalior has 600. All these have to be liquidated and when you take into consideration the compensation that is due to all these people, you will find that in the proportion in which you have put an end to autocracy, you are also increasing your privy purse liability and maintenance liability. That is inevitable. But as has been very well pointed out in this document

[Dr. B. Pattabhi Sitaramayya]

it makes for a saving of 20 crores which are the illegal allowances taken and of several crores which are legally saveable from the budgets as they had obtained up to now. The privy purse after all is a small matter. It is the monetary equivalent of the, moral surrender of the Princes. Moral surrender is what we want and all honour to the Princes that have readily agreed to such an arrangement. You can easily increase the resources of the country. You can easily decrease your expenditure by agreement. Therefore I must offer my congratulation to the Ministry upon the magnificent achievement for which they are responsible.

Finally, I should like to say that while much has been done, there is a little yet to be achieved. Madhyabharat comes next to Mysore and Travancore for the excellent traditions that it is building up and Rajasthan has still to build up such traditions. Saurashtra is not likely to be isolated for long, and then you have the problems in PEPSU and the Himachal States and last of all, Vindhya-prant. I am sure that that statesmanship and farsightedness, that acuteness of vision and that perspicacity which have been able to achieve these results will be able to follow them up by equally brilliant results in regard to these four problematical questions that still confront the States Ministry and the country.

When this is done, the whole of India will have been placed upon one common foundation and the achievements which are visualised in the Haripura Resolution will have been completed. I, therefore, offer my thanks and congratulations not merely as an individual but also as the Officiating President, as the Substitute-President of the permanent President of the States People's Conference, then as the Vice-President and now as the President of the Indian National Congress. I welcome the settlement and congratulate the Honourable the States Minister upon this magnificent achievement for which there is no parallel in history. I can easily recall the Confederation of the German States being brought together after the Battle of Jena in 1871, when France was defeated and all the Confederacy was converted into a Federation. Even that does not make any approach to the unionization of the 562 Islands of autocracy, citadels of personal rule, which had been established by the British for their own purposes. The British had gone but when they had gone, they had left a blot upon their own good name by publishing the document of 12th May 1946 relating to paramountcy which they had not allowed to be published till 23rd May 1946, i.e., till we had given our reply to the 16th May document round which all negotiations had centred. By one stroke of the pen they had released these 562 lions from their cages. And they let them loose upon the country. Fortunately, the States Ministry had been able to get hold of them and make them real citizens of usefulness; and we are sure that with their co-operation in the fields of diplomacy and industries—the two fields for which they are eminently fitted—they will help to exalt the good name of India in the comity of nations.

Mr. President : I do not mind allowing some more speakers to speak, but I suggest we finish this Part today.

Shri Ram Sahai (Madhya Bharat) : * [Mr. President, I believe there could be no occasion for greater satisfaction of the people of the Indian States than the present one when the people of those regions find themselves on the same level as the people of the Provinces. I find that they have been given under the Constitution the same status as has been provided for the people of the Provinces. No one can doubt that the people of the States have been able

* [] Translation of Hindustani Speech.

to secure this privilege only because of the great interest that Sardar Patel has taken in the problems of the States. No one can, of course, doubt that the Resolution passed by the Haripura Session of the Indian National Congress with respect to the States and the agitation carried on by the All-India States Peoples Conference as a result of that resolution for the integration and uniform administration in the Indian States and the situation created as a result of that agitation have all combined to facilitate the task of the Sardar in this respect, and have enabled him to solve the problem of the States at the earliest possible moment. All the Regional Councils affiliated to the All-India States Peoples' Conference had laboured hard in this direction and as a result of their efforts and the leadership and guidance of Sardar Patel, you find today that the States have been able to get the same status under the Constitution which is enjoyed by the Provinces.

Only last year a convention of the representatives of the States in the Constituent Assembly was held in Delhi. The statement issued by that Convention also demanded that provision should be made in the Constitution at an early date so as to put the States and the Provinces on the same level. It was as a result of that that a Committee to draw up a model constitution was appointed under the States Ministry and it drew up such a model constitution. But the conditions changed so quickly that we find that we have advanced much beyond the model constitution, and we find that the people of the States are getting the same rights as the people of the Provinces and the responsibilities and the opportunities of work for both are the same under the Constitution. Moreover, a Part relating to the States is being added to the Constitution as recommended by the Committee which had drawn up the model constitution. I may here point out that the people of the States had come to entertain many doubts about the implications of the article 306-B which has been inserted in the Constitution. Some of us even went to see the Sardar in this connection. The clarification that Sardar Patel gave to us of that article gave us very great satisfaction and all the doubts that we had in our mind were completely removed and we were convinced that in view of the conditions existing in different States such an article was really needed.

Formerly the States used to be under the control of the Political Department. Now I believe they will have to work under the guidance of the States Ministry. But I believe there would be a big difference between the former and the present-system. Formerly the Ruler of the State used to act with a view to maintain the foreign rule in India. But now the work that we shall have to do under the guidance of the States Ministry would be mainly with a view to establish as early as possible an efficient and effective administrative system. We are being provided with all the rights and facilities which are being provided to the Provinces. I, therefore, believe that it is not desirable for us to entertain any doubt or suspicion in this respect, more particularly in view of the statement made by Sardar Patel in the House in which he has made matters very clear and has given the necessary assurances.

There is a Legislative Assembly in Madhya Bharat. In Gwalior, an Assembly of this type had been in existence for the last thirty years and in Indore also such an Assembly had been in existence for about fifteen to twenty years.

The Assembly that has come into existence after the merger of several States in the Madhya Bharat Union has no doubt been in existence for a short while only. But even that Assembly has got representatives of the people of all Constituent States and that Assembly has been conducting its business according to the constitution drawn up by itself, But I believe that now we shall be working almost in the same way as the Provincial Governments work under this Constitution which we are adopting.]

Shri A. Thanu Pillai : Mr. President, Sir, I wish to add my humble quota of praise and thanks to the States Ministry and the great personality that is now in charge of that Ministry. Sir, the changes that have come about in the relations between the Indian States and the Government of India and the rapidity of those changes are really marvellous. I shall refer just to one fact. A few months ago it was considered necessary to appoint a committee to draft a model constitution for the States. That means that even then the idea was that the Indian States would have to frame their own separate constitutions. And we have now reached the stage at which we are able to frame the constitution for the whole of India, including the States, here, and that is an achievement certainly, of which any administrator, any Ministry, can be justly proud; and coming from one of the Indian States, and I may say, one of the foremost of the Indian States, I am particularly glad that I have an opportunity of witnessing this change and taking part in framing the Constitution, and making the Constitution for the States, part of the whole Constitution of India.

This brilliant record of achievement should serve as an inspiration to all of us, including the people of the States. As was mentioned here, the States are in different stages or different degrees of development. I am glad that the provisions relating to the Provinces are made applicable to the States. The States that are foremost in the whole country owe that fact to their adopting the methods prevailing in the Provinces, I mean the administrative and legislative methods, early enough. If Mysore, Travancore and Cochin are now in the forefront of Indian States, that is largely due to the fact that we adopted early enough the administrative methods and the legislative methods that were obtaining in the Provinces. The North Indian States lagged behind because they pursued their old methods, and the result is that today we find they are distinctly backward. Therefore, when we adopt the same system, when we adopt the same kind of provisions for all the States and the provinces we can naturally hope for rapid progress so far all these States are concerned. Let us hope that will be the result.

Now, Sir, I wish to refer to one or two matters to which reference has already been made here. As for article 306-B, I fully appreciate why that article is sought to be introduced. But I would like to mention the fact that some States are really on a par with the Indian provinces and there is certainly no necessity or justification to treat those States differently from the provinces. From the speech of Sardar Patel that was read out to us, we find that the aim of the States Ministry is as far as possible to introduce the same administrative and legislative methods in the States as in the provinces and deal with the States both in respect of administrative and legislative matters and in regard to interference by the Centre in the same way as the provinces. If that is so, I would ask, why not except at least such of those States as deserve to be placed on a par with the provinces even at this stage and exclude them in the Constitution itself from control by the Central Government? I fully understand the spirit in which the provision now proposed in the draft Constitution is sought to be introduced, and every Member of this House who comes from the States must view it in that spirit. But we should not go beyond the necessities of the situation. There are not only the legal and constitutional aspects of the matter; there is also the question of sentiment and self-respect involved in this. Why treat Mysore and the Union of Travancore and Cochin differently from Madras or Bombay? That is the question that naturally arises. These States are as much advanced as any Indian province. Why should you treat them differently? Where is the necessity? The Drafting Committee may be good enough to consider this my suggestion and if the proposed control is considered necessary in the case of some States, a Schedule of such States may be included in the constitution

excluding advanced States like Mysore, Travancore and Cochin. To leave it to the President to exclude such States by executive order cannot be justified.

Then, there is another minor matter raised by Mr. Santhanam which I wish to refer to. He suggested that even though the pay of the High Court Judges in States or States Unions could be fixed by the President in consultation with the Rajpramukh, their allowances and pensions should be dealt with differently and that they must be fixed by Parliament. I can understand the case in regard to pensions because pensions of High Court judges, are to be a charge on the Consolidated Fund of India. If this is so, pensions may be fixed by Parliament. But if there is any justification to have the salaries of High Court judges in the States fixed by the President in consultation with the Rajpramukh, there is justification also for having their allowances fixed in the same way. So, I would suggest that in Mr. Santhanam's proposed amendment this modification may be made, that is to say, that that amendment should be restricted to pensions only, leaving allowances to be treated on the same basis as the salaries.

Then, Sir, in regard to the privy purse, I have nothing to say. I think the proposed provisions should be acceptable to the Members that come from the States.

Finally, I would like to make an appeal to the Government and to this House in regard to the financial position of the Indian States. It is a matter of common knowledge that because of the federal financial integration, the States stand to lose a good part of their financial resources. Provision is sought to be made for enabling States to run their administrations as they have hitherto been doing for some considerable period, and I hope effect will be given to this provision in a very liberal spirit by the Government of India. In fact, I must make an earnest appeal that the consideration of this problem should be in a very liberal and sympathetic attitude. Otherwise, the administrations of the States cannot go on. So far as Travancore and Cochin are concerned out a total revenue of 10 to 12 crores, we stand to lose three or four crores; unless amends are made, our administration cannot function and would come to a standstill. I hope this matter will receive the earnest consideration of the Central Government.

Provision is sought to be made for agreements being entered into between the Central Government and the States Unions in regard to the financial adjustments necessitated by federal financial integration. Provisions have to be made to meet all cases in regard to which agreements will have to be entered into. In regard to duties that are abolished in the States, provision is proposed for reimbursement being made by the Centre. Provision should also be made for agreements being entered into to give financial aid to the Indian States on account of loss of income-tax and other sources of revenue. I hope all these necessary provisions will be made in the Constitution.

With these observations, I support the article that is placed before the House.

Mr. President : It has been represented that many Members from the States would like to participate in the discussion in connection With these articles relating to the States. I think this is a very reasonable desire on their part, and I am prepared to accommodate them. So, I would not put the whole thing to the vote today. We may continue the discussion tomorrow. but there is one suggestion which I would like to make. We would have in that case the other amendments placed before the House so that the whole things may be taken ultimately at one time when all the amendments are there before the House.

Mr. President : If you would finish within a short time, I am prepared to allow you to speak now.

Shrimati Annie Mascarene (Travancore & Cochin Union) .: Mr. President, Sir, after listening to the speech of the Sardar, I feel that all my difficulties with regard to the States have disappeared. Section 306 B had been rather a disquieting one since I had come across it, and I had thought that in the making of democratic India, the States are going to be under a Roman-like tutelage for ages to come. Travancore, Cochin and Mysore, in fact the South Indian States, had been the territories in which democracy had been given its first advent. I am not flattering myself, but I should like to inform this House I think they already know—that adult franchise was first introduced in India by Travancore, and democratic institutions were introduced in Travancore and Cochin before any other province could think of them. When article 306 B was introduced, we thought, are we going to be dropped down with an inferiority complex by the States Ministry ? The wisdom of the Bismark of India had been too deep for us to understand. He has so moulded the destiny of democratic India that States which are already quite advanced are on a par with the provinces, and the States which are to advance hereafter are given a safety valve so that they may develop without fear.

There is one point which strikes me as being of great importance and that is the centralisation of power. No nation, no empire had survived in the world without a strong centralisation of power. The confederation of Germany as moulded by Bismark today finds a place so difficult on the map of Europe that European administrators find it a problem to dismember them. The examples of Venizelos in Greece and Sun Yat Sen in China are enough to convince us that this Bismark of India is an administrator whose wisdom and experience are unequalled. The States people are very much obliged to the States Ministry for the work they have done during the last few months. They are able to feel now that they are no more going to be tyrannised by autocracies which under the British Administration repressed them. 40 per cent. of the territory of India and 23 per cent. of the population of India are now on a par with the provinces and provincial subjects, so much so the moulding of the destiny of democratic India is made easy and in a short time we shall be one of the foremost democracies that the world had ever seen. We should congratulate ourselves that this is the first occasion in the history of the world when four hundred millions of people have launched on the ocean of self-government and that is going to be the best example ever known in the history of the world. I thank the States Ministry once again and request the people of the States under development to rise equal to the occasion 'and come soon on a par with the provinces, so that by next year we shall have no States but only provinces in a democratic India.

The Assembly then adjourned till Ten of the Clock on Thursday, the 13th October 1949.

CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 13th October, 1949

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.

DRAFT CONSTITUTION—(Contd.)

Part VI-A—(Contd.)

Mr. President : I think it would be better to take the other articles which are sought to be amended in connection with the States and take all the amendments, and then have the general discussion. I do not think it is necessary for Dr. Ambedkar to read the whole thing.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Sir, I move.

“That article 224 be omitted.”

“That article 225 be omitted.”

“That after article 235, the following now article be inserted, namely:—

‘235 A. (1) Notwithstanding anything contained in this Constitution, a State for the time being specified in Part III of the First Schedule having any armed force immediately before the commencement of this Constitution may, until Parliament by law otherwise provides, continue to maintain the said force after such commencement subject to such general or special orders as the President may from time to time issue in this behalf.

Armed forces in States in Part III of the First Schedule.

(2) Any such armed force as is referred to in clause (1) of this article shall form part of the forces of the Union.’ ”

“That for article 236, the following article be substituted, namely:—

236. The Government of India may by agreement with the Government of any territory not being part of the territory of India undertake any executive, legislative or judicial functions vested in the Government of such territory, but every such ‘agreement shall be subject to and governed by, any law relating to the exercise of foreign jurisdiction for the time being in force.’ ”

Power of the Union to undertake executive, legislative or judicial functions in relation to any territory not being part of the territory of India.

“That article 237 be omitted.”

“That after article 274 D, the following new articles be inserted, namely:—

‘274 DD. Notwithstanding anything contained in the foregoing provisions of this Part the President may enter into an agreement with a State for the time being specified in Part III of the First Schedule with respect to the levy and collection of any tax or duty leviable by the State on Goods imported into the State from other States or on goods exported from the State to other States, and any agreement entered into under this article shall continue in force for such period not exceeding ten years from the commencement of this Constitution as may be specified in the agreement :

Power of certain State in Part III of the First Schedule to impose restrictions on trade and commence by the levy of certain taxes and duties on goods imported into or exported from such State.

[The Honourable Dr. B. R. Ambedkar]

Provided that the President may at any time after the expiration of five years from such commencement terminate or modify any such agreement if after consideration of the report of the Finance Commission constituted under article 260 of this Constitution he thinks it necessary to do so.

‘274 DDD. Nothing in articles 274 A and 274 C of this Constitution shall affect the provisions of any existing law except in so far as the President may by order otherwise provide.’ ”
Effect of article 274A and 274C on existing laws.

“That after article 302. the following new article be inserted, namely :—

‘302A. In the exercise of the power of Parliament or of the Legislature of a State to make laws or in the exercise of the executive power of the Union or of a State, due regard shall be had to the guarantee or assurance given under any such covenant or agreement as is referred to in article 267A* of this Constitution with respect to the personal rights, privileges and dignities of the Ruler of an Indian State.’ ”
Rights and privileges of Rulers of Indian States.

“That after article 306, the following new articles be inserted :

‘306B. Notwithstanding anything contained in this Constitution, during a period of ten years from the commencement thereof, or during such longer or shorter period as Parliament may by law provide in respect of any State. the Government of every State for the time being specified in Part III of the First Schedule shall be under the general control of, and comply with such particular directions, if any, as may from time to time be given by the President, and any failure to comply with such directions shall be deemed to be a failure to carry out the Government of the State in accordance with the provisions of this Constitution:

‘Provided that the President may by order direct that the provisions of this article shall not apply to any State specified in the order.’ ”

“That for clause (1) of article 258, the following clause be substituted :-

‘(1) Notwithstanding anything contained in this Chapter, the Government of India may, subject to the provisions of clause (2) of this article, enter into an agreement with the Government of a State for the time being specified in Part III of the First Schedule with respect to-

- (a) the levy and collection of any tax or duty leviable by the Government of India in such State and for the distribution of the proceeds thereof otherwise than in accordance with the provisions of this Chapter;
- (b) the grant of any financial assistance by the Government of India to such State in consequence of the loss of any revenue which that State used to derive from any tax or duty leviable under this constitution by the Government of India or from any other sources;
- (c) the contribution by such State in respect of any payment made by the Government of India under clause (1) of article 267A of this Constitution,

and when an agreement is so entered into, the provisions of this Chapter shall in relation to such State have effect subject to the terms of such agreement.’ ”

“That in Chapter I of Part IX, after article 267, the following new article shall be inserted, namely :—

‘267A. (1) Where under any covenant or agreement entered into by the Ruler of any Indian State before the commencement of this Constitution, the payment of any sums, free of tax, has been guaranteed or assured by the Government of the Dominion of India to any Ruler of such State as Privy Purse—

Privy purse sums of Rulers.

- (a) such sums shall be charged on, and paid out of, the Consolidated Fund of India; and
- (b) the sums so paid to any Ruler shall be exempt from all taxes on income.

(2) Where the territories of any such Indian State as aforesaid are comprised within a State specified in Part I or Part III of the First Schedule there shall be charged on, and paid out of, the Consolidated Fund of that State such contribution, if any, in respect of the payments made by the Government of India

*To be circulated later.

under clause (1) of this article and for such period as may, subject to any agreement entered into in that behalf under clause (1) of article 258 of this Constitution, be determined by order of the President.”

“That after article 270, the following new article be inserted :-

‘270A. (1) As from the commencement of this Constitution—

(a) All assets relating to any of the matters enumerated in the Union List vested immediately before such commencement, in any Indian State corresponding to any State for the time being specified in Part III of the First Schedule shall be vested in the Government of India, and

(b) all liabilities relating to any of the said matters of the Government of any Indian State corresponding to any State for the time being specified in Part III of the First Schedule shall be the liabilities of the Government of India.

subject to any agreement entered into in that behalf by the Government of India with the Government of that State.

(2) As from the commencement of this Constitution the Government of each State for the time being specified in Part III of the first Schedule shall be the successor of the Government of the corresponding Indian State as regards all property, assets, liabilities in obligations other than the assets and liabilities referred to in (1) of this article.”

Shri Brajeshwar Prasad (Bihar: General) : Sir, I would like to suggest that these two amendments No. 218 and 219 relating to articles 224 and 225 should be disposed of first, or the amendments standing in the name of honourable Members to these articles will also have to be moved.

Mr. President : They have to be deleted. It dispose of them.

The question is:

“That article 224 be omitted.”

The motion was adopted.

Article 224 was deleted from the Constitution.

Mr. President : The question is;

“That article 225 be omitted.”

The motion was adopted.

Article 225 was deleted from the Constitution.

Mr. President : Then we shall take up amendments to 220.

Shri Brajeshwar Prasad : Sir, I move :

“That in amendment No. 220 of List VII (Second Week), in clause (1), of the proposed new article 235A, for the words ‘ until Parliament by law otherwise provides’ the words until the President by order otherwise provides’ be substituted.”

I am opposed to these words, because I hold that these works are inappropriate. There must be a clear distinction between executive orders and legislative authority. This is a subject which is purely of an executive character. The question as to when the armed forces of the State should be fully integrated with the Indian Army is not a legislative matter. It is a matter which can be decided by the executive authority. There should be no confusion between the executive and the legislative functions. Here no vital principle is involved. We have already accepted that the Stated Army is also a part of the Indian

[Shri Brajeshwar Prasad]

army. Even in the transitional period they are recognised as part and parcel of the Indian Army. Therefore, I want that these words should be deleted and substituted by the words that I have suggested in my amendment.

Sir, there is another reason why I am in favour of the President exercising this function in preference to the Parliament. If we want that the pace of integration should be accelerated, then the power must be vested in the hands of the President and not of the Parliament. Parliamentary action means delay.

Sir, I would like to move another amendment standing in my name, I refer to amendment No. 251. I move :

“That in amendment No. 225 of List VII (Second Week), in the proposed new article 306 B,—

- (i) the words ‘during a period of ten years from the commencement thereof, or during such longer or shorter period as Parliament may by law provide in respect of any State’, be deleted; and
- (ii) the words ‘for the time being specified in Part III of the First Schedule’ be deleted.”

This power of general control and supervision for a period of ten years is not adequate to meet the needs of the hour. I am quite convinced in my own mind that all the problems that confront the Indian States will not be solved within this short time. Sir, the maladies that have confronted us for the last two centuries cannot be solved by any stratagem within such a short time. Federalism tends towards unitary state. Whether we make this provision or not, the power of central supervision, direction and control will automatically apply one way or the other. Therefore, I feel that this power should not be a temporary power. This power should be vested for an indefinite period.

There is one other point to which I would like to draw your attention. Yesterday in the speech of the Deputy Prime Minister (which was read out by Mr. Munshi) the words used, as far as I can remember, were that “these provisions shall continue for such period as may be necessary”. Now, here, the words used are that they shall not continue for a period longer than ten years. I would be quite satisfied if these words are taken out. I feel that this is a very unrealistic provision. It has got no meaning. We cannot arbitrarily lay down a period within which all problems in the native States must be solved because in the Constitution we have made a provision that our power shall not continue beyond a period of ten years.

There is another part of the amendment to which I would like to draw the attention of the House. I do not understand why this step-motherly treatment is being meted out to the provinces. We also want to benefit by the mature experience of the Centre. Why make this invidious distinction? I am dissatisfied—I am not talking here of any province in particular; let there be no illusion in the minds of anyone that I am dissatisfied with the administration of this province or that. I am talking here in general terms—I am dissatisfied with the system of provincial autonomy.

Mr. President : I do not think we need discuss that question once again here. We are concerned here with the States. The other question we have discussed *ad nauseam*.

Shri Brajeshwar Prasad : I am referring to the amendment wherein I want that the words “for the time being specified in Part III of the First Schedule” should be deleted. It means that this provision should be applicable to all the provinces as a whole. Probably I have not been able to explain the implications of this amendment.

Mr. President : Then it is out of order. As a matter of fact I have noted my paper that it is out of order. It is out of order because we are not discussing the question of the Provinces here, but we are discussing the question of the States. So far as the provinces are concerned, we have dealt with the question already and finished with it.

Shri Brajeshwar Prasad : Sir, I bow down to your ruling.

Shri R. K. Sidhwa (C. P. & Berar : General) : Mr. President, Sir, I beg to move :

“That in amendment No. 220 of List VII (Second Week), in clause (1) of the proposed new article 235 A, for the words ‘may until Parliament by law otherwise-provides, continue to maintain the said force after such commencement subject to such general or special orders as the President may from time to time issue in this behalf’ the word, ‘shall merge into the armed forces of the Union and shall form part of the forces of the Union’ be substituted.”

Sir, with your permission I shall move amendment No. 252 also which reads thus (I am deleting the first part of the amendment relating to ten years and am moving only the second part) :

“That in amendment No. 225 of List VII (Second Week), in the proposed new article 306 B, the following be inserted at the end of the article but before the proviso :—

‘During the period of ten years as stated therein all States shall introduce immediately laws for full-fledged elected local bodies within one year from the commencement of this Constitution.’ ”

As far as the first amendment is concerned, I find that the armed forces which at present exist in the States are to be under the control of the Commander-in-Chief of India: that is to say, they will be under the control of the Forces of India. But I do not understand why a special distinction should be made in the case of armed forces being retained in the States. We have in the provinces no armed forces. All the provinces today have got their police forces and there are also armed police forces, but there are no military armed forces in any province. There were none in the previous regime and there are none even now. Of course under the old regime the Indian States maintained armed forces for reasons which we know. But now when they have merged with provinces or have formed into separate units why should they have separate armed forces within the States? I wish, therefore, that all the armed forces should be removed from the States and be merged with the armed forces of India. Then they will be under the control of the Indian Union. I see no reason why the States should be given the special privilege of keeping separate armed forces. It might create many conflicts.. The armed forces in India will be under the supervision of the Commander-in-Chief. If these separate armed forces are allowed to be kept in the States without any specific reasons, for what purpose will they be maintained ? After all the police force is there. If any necessity arises, the armed forces will be available from the Indian Union. I therefore hope that the amendment moved by me would be considered by the Drafting Committee, that the armed forces of the States should be merged with those of the Indian Union and they should be under the control of the Commander-in-Chief of India.

As regards the second amendment I entirely agree with what was stated yesterday in the statement of the Honourable Sardar Vallabhbhai Patel, which was read out by Mr. Munshi. The conditions in Indian States in regard to political matters are not parallel to what exist in the provinces. We all know that very well. I do not come from the States, but I have extensively toured in the Indian States and Congress workers have taken me many times to Indian States for propaganda work. From what little I know of several Indian States, their condition is most miserable. There is no local body existing there. When I went to Cutch I did not find a printing press there and when

[Shri R. K. Sidhwa]

I was addressing a meeting and was referring to the ballot box and the advantage of votes the public did not know what was the ballot box and what was secret voting. From this you can understand how the people of the States have been kept in darkness by the rulers in these States. In Cutch no printing press even was allowed. That is the condition in many of the States as I had occasion to visit.

I do not say that all the States are in this condition. As was stated yesterday by the Honourable the Deputy Prime Minister there are progressive States like Travancore, Mysore and Cochin and others for which of course we have admiration. They have worked very well even during the British regime and they have been really progressive. We do not bring them into the picture here. But there are really most retrograde States—a large number of them and I therefore feel that it is perfectly correct to control their administration from the Centre for ten years. And what is the control? It is a preventive measure. They will be allowed to function as usual, but if extraordinary circumstances arise in their administration the Centre will certainly have a say in the matter. It is perfectly correct. We must admit that some of the States are in such a miserable state—I will use the word—and a good number of States. There are no administrations there, let me tell you. Excuse me if I have to say these things, but there is no municipality, there is no local body there. In a State where the public do not know what is a local body, what is a municipality and what are the powers of a municipality, you can understand how they can function and administer the State politically successfully. Therefore, we had achieved most marvelously in Bringing one-third of our population in the Indian States into the Indian Union. We ought to be proud today that 10 crores of the population of the Indian States have been made free, who were actually slaves. When we took charge from the British Government they told us that there would be 10 crores of people in States for whom the question of freedom need not arise. The British Government thought they might bring peace or they may create disturbances; but our Deputy Prime Minister has shown like a magic lantern that he shall so see I hat all these feudal states be brought on a par with other parts of the country. When I was a boy, I had seen a drama of Alladin and his wonderful lamp; but what we have seen today is real Alladin magic lamp and we are all proud of it. Not only is the Deputy Prime Minister proud; he is, of course indeed proud, but we ought to be proud too and it is very unfair that the people sometimes while maligning the Government forget the greatest achievement that we have achieved of releasing 10 crores of people who were actually under subjugation and slavery. It is matter of pride for any nation that within a period of one and a half years we have liberated these people who were slaves. The British people when they went away did not consider what will happen to them and really like magic a change has been brought about and today they are free.

With all this when that first stage has been finished the second stage is a very important part and that is we have to administer these States efficiently. Personally my view is that some of the States which are on the border should be merged with the adjoining provinces; by merging into the adjoining provinces they will certainly come into the progressive parts of the provinces. This has been done in some cases, but not in many cases Eventually that should be the best course, but there are certain States which have to remain independent, as for as for instance Rajasthan. Rajasthan, as you know, is a scattered Rajputna State and I do feel that the Centre must keep their hold. I am myself proud to see Rajasthan become the biggest Rajasthan. but I am very sorry to say that the administration there is not quite good and when I was appointed as a member to investigate the wishes of the people of Bharatpur and Dholpur a member to investigate the wishes of the people of Bharatpur and Dholpur of course, my personal view is different—they wanted to join the Rajasthan

and the State Ministry resolved that they should be merged with Rajasthan. I do not find fault with the State of Rajasthan, because there are no proper people available for the administration of the States and it is not their fault. They were not trained. You can very well understand Sir, we in the provinces, those who have been in the local bodies, in the municipalities, had a good training. They knew the municipalities are the first training for a citizen to take charge of the basic administration and therefore, Sir, I have made a suggestion in my amendment that while the control shall be there, the "control" in the sense that has been explained by the Honourable Sardar Patel yesterday will, be only when the necessity arises. During that period, I desire that the local body should be immediately formed, a full-fledged local body should be immediately formed, laws should be passed and they should be put into operation within one year from the commencement of the Act, so that people may know really what is an administration, what are the franchise, what are the powers, what are the rights and what are the privileges in a small sphere, in their own town, in their own villages. When they come to know that really a local body is a thing where also a small city or a small town has to be governed by themselves, they will create for themselves good administrators for administering their own State. At the same time we shall have very good ministers to take charge of the administration and bring these States into life with the provinces. I hope my friends from the States will not misunderstand me when I support the proposition for control for 10 years. After all it does not look nice that they should be under the existing conditions when we are all free and when we want absolute control, there should be some control from the Centre. I do not share the view that there should not be any control on any free local bodies. Today all local bodies, municipalities, corporations are all governed by certain Acts and I can tell you, Sir, that even in a corporation like those in Bombay, Calcutta, Madras, the Provincial Governments have a control. At any time if they feel that the administration of the corporation is going wrong, they have the power to intervene. The whole position, therefore, is for the purpose of this Act to intervene in case of necessity just as in the Calcutta Corporation. The Calcutta Corporation's business was very Wrong and therefore, there was a provision in the Act that the Government can intervene in the event of the administration not functioning properly and the Government of Bengal took charge of the Calcutta Corporation, one of the biggest corporations. As you may know, Mr. President, the administration of Calcutta Corporation has been taken under the control of the Government. There is nothing wrong in it. After all it is our Government now. There was the stigma in pre-independence days and I myself was fighting when such a control was under the British Government. I said then that our opportunity should be given when they do not function properly, an opportunity should be given them a second time to improve. I do hold that view that even before the suppression of any local body opportunity should be given by the Government to improve. When they continuously go wrong, then the control should be taken by the Centre. Similarly, I am sure, Sir, that when an occasion arises when anything is going wrong in the States the Centre should give a warning to that State and if the State does not improve and continues in that condition, then the Centre will certainly have the right to intervene and in the interests of the whole country—not only in the interest of the State alone,—the Centre will be justified in taking possession of that State. I therefore say that those States which are very backward in those States municipal laws should be passed immediately so that they may have a first- class training. If they have three or five years term of office, they can very well advance (*Interruption*).

Therefore I contend Sir, what I have stated in amendment No. 252 the Drafting Committee will kindly consider in view of the control that has to be taken by the Centre in the event of any inefficiency in the State that may

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exist. With these words, Sir, I commend both the amendments Nos. 246 and 252 for the acceptance of the House.

Prof. Shibban Lal Saksena (United Provinces : General) : Sir, I beg to move :

“That in amendment No. 220 of List VII (Second Week), in clause (2) of the proposed new article 235A, the words ‘and the Union shall bear the expenses thereof’ be added at the end.”

This amendment No. 220 says :

“Notwithstanding anything contained in this Constitution, a State for the time being specified in Part III of the First Schedule having any armed force immediately before the commencement of this Constitution may, until Parliament by law otherwise provides, continue to maintain the said force after such commencement subject to such general or special orders as the President may from time to time issue in this behalf.

(2) Any such armed force as is referred to in clause (1) of this article shall form part of the forces of the Union.”

The question arises, who shall bear the costs ? In the first part it is said that until Parliament otherwise decides, the armed force shall be maintained by the State itself. In part 2 it is said that armed force shall form part of the forces of the Union. There is some discrepancy between the two. I personally feel, Sir, that what is intended is that very soon we shall have all the forces under the control of the Union and until Parliament passes a law to that effect, they continue to remain as they are. I think as they become part of the forces of the Union, the expenses should be borne by the Union and they should be under the control and discipline of the Union as is intended by clause (2). In fact, many of the States may not be able to provide for the maintenance of these forces. I, therefore, think that even though it may take some time for the Parliament to pass a law taking over all these forces, still *de facto* the forces must come to the Union and the expenses thereof must also be borne by the Union.

I have also given notice of amendments 303, 304 and 305. Amendment No. 303 refers to article 274 DD and says :

“That in amendment No. 223 of List VII (Second Week), in the proposed new article 274 DD, after the words ‘the President’ where they occur for the first time, the words subject to the approval of the Parliament be inserted.”

Article 274 DD says : “Notwithstanding anything contained in the foregoing provisions of this part the President may enter into an agreement with a State..... etc.” What I want is that this power which is being given to the President to enter into financial agreements with the States, especially when agreements must be subject to the approval of Parliament. Therefore, I want to introduce these words.

Then Sir, article 274 DDD says : “Nothing in articles 274A and 274 C of this Constitution shall affect the provisions of any existing law except in so far as the President may by order otherwise provide.” To this, my amendment is :

“That in amendment No. 223 of List VII (Second Week), in the proposed new article 274 DDD, for the words ‘President may by order’ the words ‘Parliament may by law’ be substituted.”

What I want is that here also for the words “the President may by order provide”, the words “Parliament may by law provide”, be substituted. My only argument is that I do not want that this power should be given to the President Which means the Cabinet, but it should be given to Parliament especially in matters of such importance.

Then, Sir, there is an amendment to article 306 B which has been commented upon so much and about which the Honourable Sardar Patel has made a statement. After his exposition, I think much of the criticism goes. But, still I think that Mr. Thanu Pillai's suggestion was a better one. We should have divided the States into Schedules and some of the States should be excluded from the operation of this article. I hope States like Mysore and Travancore will not be subject to this provision, and that the President will from the beginning pass an order to that effect. My amendment in article 306A is :

“That in amendment No. 225 of List VII (Second Week) in the proviso to the proposed new article 306 B, for the words ‘President may by order’ the words ‘Parliament may by law’ be substituted.”

The proviso reads that the President may by order direct that the provisions of this article shall not apply to any State specified in the order. That means that when a State has to be taken out of this guardianship the President may issue an order. I want that Parliament alone should be able to do it by law. It is quite possible that some of the States may think that they are fit to be excluded from the operation of this article and they should be able to approach the Parliament and Parliament should be able to do it by law. Otherwise, they may have to hang on the President, and to be in his good books to get out of his control. I think if Parliament has that power, they will not have to be subservient to the States Ministry of the Government of India. This amendment will give Parliament the paramount power and I think this is desirable.

While I have given notice of amendments to this Chapter, I do want to join in the chorus of praise which has been showered on our leader, the Honourable Sardar Vallabhbhai Patel on this historic occasion. I think this is the biggest task that has been accomplished by our Government in the past two years. This one single achievement of Sardar Patel will entitle him to an immortal place among the builders of modern India. The British had created five hundred and odd States and he tried to divide our country into so many Pakistans. By the genius of the Honourable Sardar Patel and by the work of the officials of the States Ministry, we have been able to accomplish this great achievement. I join the House in congratulating Sardar Patel on this great achievement. Friends here have compared him to Bismarck. I consider Sardar Patel's achievement to be greater than that of Bismarck. For Sardar Patel accomplished this revolution without shedding a drop of blood. I pray to God that he may be spared long, and be soon restored to his normal health and vigour, so that he may lead the Nation to greater victories in the future.

(Amendments Nos. 247, 297 and 298 were not moved.)

Mr. President : Amendment No. 222 Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : I have already moved that.

Shri S. V. Krishnamoorthi Rao (Mysore State) : In view of the Statement made by the Honourable Sardar Patel yesterday and the assurance given by him so far the Mysore State is concerned, I am not moving this amendment. (No. 249). I would like to participate in the debate.

(Amendment No. 250 was not moved.)

Mr. President : Amendment No. 279 : Sarangadhar Das.

Shri Sarangadhar Das (Orissa State) : Mr. President Sir.....

Mr. President : This amendment is only for deletion. It need not be moved. You can speak about it later.

Shri H. R. Guruv Reddy (Mysore State) : I do not wish to move amendment 289 in view of the assurance given by Sardar Patel.

Mr. President : Prof. Shibban Lal Saksena, you have given notice of some amendments this morning.

Prof. Shibban Lal Saksena : Mr. President, Sir, notice has been given of amendments to the new articles 258, 267-A, 270-A and 264-A.

Mr. President : 264-A has not been moved.

Prof. Shibban Lal Saksena : I beg to move :

“That in amendment No. 299 of List XIII (Second Week), at the end of the proposed clause (1) of article 258 the following words be added :—

‘after that agreement has been approved by Parliament.’ ”

My second amendment is :

“That in amendment No.299 of List XIII (Second Week), sub-clause (a), (b) and (c) of the proposed clause (1) of article 259 be re-lettered as sub-clauses (b), (c) and (d) of that clause and the following be inserted as sub-clause (a) :-

- (a) questions arising from or connected with the resting in the Union of assets and liabilities of such states related to any of the matters enumerated in the Union List.”

This second amendment is really an improvement on amendment 300 of Mr. Krishnamachari. Regarding the first amendment, I feel that when important agreements about financial matters are made with the States, it must be the Parliament which must be the final authority. Therefore I want to add “after that agreement has been approved by Parliament.”

My amendment to article 267A is :

“That in amendment No. 301 of List XIII (Second Week), sub-clause (b) of clause (1) of the proposed new article 267A be deleted.”

When the agreement provides for an allowance free of income- tax, there is no need for this clause. My next amendment to article 267A is—

“That in amendment No. 301 of List XIII (Second Week), in clause (2) of the proposed new article 267A, for the words ‘by order of the President’ the ‘words by Parliament by law’ be substituted.”

Here also it should be the Parliament that should finally sanction the expenditure. Therefore, I have suggested this change.

Then my amendment to new article 270A is :

“That in amendment No. 302 of List XIII (Second Week), in clause (1) of the proposed new article 270A, the words ‘and approved by Parliament’ be added at the end.”

This relates to the properties. Clause (1) says :—

“As from the commencement of this Constitution all assets relating to any of the matters enumerated in the Union List vested immediately before such commencement in any Indian State corresponding to any State for the time being specified in Part III of the First Schedule shall be vested in the Government of India.”

To this I want to add at the end ‘and approved by Parliament.’

I only desire by all these amendments to assert and maintain the final authority of Parliament and I hope these amendments will be accepted.

Mr. President : The article and the amendments are open for discussion. Mr. Sarangadhar Das.

Shri B. Das (Orissa : General) : Sir, I have tabled two amendments to article 267A. I move :

“That in amendment No.301 of List XIII (Second Week), after clause (2) of the proposed new article 267A the following new clause be added :—

- (3) When any sums are guaranteed or assured to any Ruler's family members or relations such sums be treated as part of privy purse and as free of tax."

Another amendment I have tabled is to the following effect :—

"That in amendment No. 301 of list XIII (Second Week), in clause (1) of the proposed new article 267A. after the words 'to any Ruler' the words 'or his family relations, be inserted."

It is understood from article 267A that the money granted to any ruler should be free of taxes. When negotiations were going on, most of us understood that Ruler's mother and other family members and widows of former rulers who receive grants by those negotiations will not be taxed income-tax or any other tax. I was surprised last night to receive a visit from the Dowagar Maharani of Mayurbhanj who had been granted Rs. 3,000 p.m. as her allowance when negotiations took place. For April and May she received Rs. 3,000 per month and for these two months she was paid fully. Thereafter Rs. 707 p.m. is being deducted from April last as income-tax on the same. She is the wife of a Maharaja who is no more and the daughter of a Maharaja. How could she pay income-tax when income-tax did not exist in many States? It means that many of these relatives of rulers, such as the ruler's mother, his sister-in-law as in the case I cited and others, they will all be taxed, income-tax. Yesterday our revered leader, Sardar Vallabhbhai Patel, made an excellent speech whereby he guaranteed peace and tranquility for the citizens of the States. I think such peace and tranquility is guaranteed to the relatives of the rulers also. According to the draft article 267-A, the privy purse is to be free of income-tax. There are many States in India which never paid any income-tax. Particularly when we come to the lady members of the ruler's family—the ex-Raja's family—it is very hard on them they cannot understand why any income-tax should be deducted and in such large proportion as Rs. 707 out of Rs. 3,000 per month! It includes super-tax and other taxes also. Perhaps that State had no income-tax at all, and even if it had, it was not on such a high level as is prevalent in our provinces. Till last night I had not understood that the relations of the Princes and the Maharanis—the mother of the ex-Ruler, or wife of the late Ruler will be subjected to such deduction of income-tax. I think privy purse means money that is sanctioned to a ruler and his family members. Therefore, they must be exempt from any tax. If the ruler with a huge sum of Rs. 20 lakhs or 25 lakhs as allowances is not subjected to income-tax why should the relations of the rulers be taxed income-tax and that too at the maximum rates of income-tax assessment that is prevalent in India, and that has never been understood in the States? Sir, this is a lacuna that has been left over and it must be corrected. It is no use harassing people who were enjoying great privileges in those States. If the rulers or the descendants of the rulers are to enjoy such privileges in the future. I do not understand why the ruler's mother and the near cognate Maharani of the State should be taxed income-tax. I hope this wrong will be corrected and righted.

Mr. President : The whole thing is now for discussion. Mr. Sarangadhar Das.

Shri Sarangadhar Das : Mr. President, I had given an amendment to delete article 306 B, but as deletion is not being moved, I want to say a few words about this article.

First of all, I want to say that I am second to none in recognising and praising the work that the Honourable Sardar Vallabhbhai Patel has done in reducing the number of States from five hundred and odd to seven. I happened in 1947, as a Member of the All-India States Peoples Conference, to know what the dangers were and what a gigantic task it was. I personally at that time did not believe that it could be done in such a short time. But it has been done, and for the consummation of this monumental work the whole credit must go to Sardar Vallabhbhai Patel and the States Ministry. I am also aware that

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when we had objected to the distinction made between the Provinces and the States in the new constitution, in certain fundamental matters last winter, he had given us an assurance that he was trying to bring the States on a par with the Provinces, and that he has done now.

But my objection now to article 306 B is for this reason that we are trying to have democratic institutions all over; we have destroyed autocracy and introduced democracy; but in having this article 306 B whereby the States Ministry, I mean the Government of India, will have control over these States Unions. It makes a distinction between the Provinces and the States, and to my mind it strikes at the root of democratic institutions. I am in a minority of one here. Because I know very well that many of the States Members who happen to be Ministers in their States Unions or States do not like this article, do not like this subordination to the Government of India, in respect of their day-to-day administration, and yet they, because of a certain mandate, cannot speak and they will not speak. My objection to the article is particularly on this ground that by having control and by sending directions from the Centre to the States, bureaucratic rule will completely prevail. There will be no real representative Government.

I can also say from my experience of the last one and a half years with regard to the Indian States that have been merged into the Provinces, that the officials who have been sent by the Provincial Governments as administrators into these States have acted in such a way that they are the successors of the Rajas, they are the successors of the rulers in their whimsical rule, and the general people in those States have that impression. Whatever nominated representatives there used to be last year in Orissa and C. P. States, they had no voice and the people soon found out that the so-called representatives who were nominated as Councillors by the Provincial Governments had no voice in the matter of administration. They were nobodies, and consequently the officials are ruling now as they were ruling in the Raja's regime. And it is very unfortunate that our officials from the Provinces who were trained in a certain administrative machinery in the provinces, when they come to there States where there is no democracy, where there is no voice of the people, they have acted as if they were the rulers themselves. Probably they think they have an opportunity to be the rajas for some time and they have done so.

I also know that in many of the big Unions that have been formed during the last year there are officials, the subordinate officials and the high ones, who act in that manner and the people have no say, no opportunity of airing their grievances. Consequently, when the States Ministry, or I should say the Government of India will give directions for the day-today administration, it will assure those officials that although the States Unions will have their legislatures and there will be representatives elected by the people, even those elected people might take some decisions which may be contrary to the decisions of the Government of India, and that the decision of the Government will have to be carried out by those officials, and that the representatives will have no other say but to keep quiet, and let the machine go on according to the desire of the Government of India. Everyone concerned will realize the supremacy of the officials. I quite appreciate, as some of the speakers have already stated, and Sardar Vallabhbhai himself has stated in his statement, that in the States the people do not have democratic traditions, there was no local board, no municipality. I know there were States where even a library could not be established, because the Raja and his Dewan were afraid that people by reading books would become rebels.

I appreciate that, out now that we are introducing democracy. I strongly protest that there should be one treatment for the provinces, where the ministries

will be autonomous without any interference from outside and another treatment for States and that those States Unions or States like Mysore will have to take orders from the Central Government. I know that some of them will be exempted and they deserve that exemption. Even then, when Mysore gets the distinction of being fully autonomous, and Rajasthan becomes a subordinate body, I believe this House will realise what the feeling of the representatives of Rajasthan will be. My contention is that when the article takes any of these States or States Unions under a period of tutelage, it may be for ten years or Parliament might decide on a period of fifteen or twenty years, it deprives the administration of its representative character.

Now, it seems that exactly as the British Government wanted during the last fifty or sixty years to train us in democratic forms of Government, so also our own Government, our own leaders, who were condemning the policies of the British Government, are now introducing the same technique in the case of the States people, and I have a feeling that the Government at the Centre and also most of the Members from the provinces here have a step-motherly feeling towards the people of the States. This will be evident from what has happened about the merged States. Last January we passed here an amendment to the Government of India Act for completely merging some States into the provinces of Bombay, Madras, C.P. and Orissa. At that time we had hoped and we had some assurance from some quarters that there would be election under the restricted franchise of the 1935 Act, but there has been no election and I know definitely that in two of the provinces at least, members have been nominated by the provincial government through official machinery. It is an interesting thing to know that the nominations were not even made by Congress Committees. One would presume that Government being run by Congress, it would listen to the Congress Committees. In one province the recommendations of the Congress Committees were thrown out. In another the Congress Committees were not consulted at all. One would take it that as the government is run by the Congress Party it would consult its own machinery, but it was not done. In most cases officials have nominated the members. They are called people's representatives. To my mind it is an insult to the people of the States that some people who were unknown in public life or used to side with the Raja, have been nominated. From this I want the House to understand that now that autocracy has been destroyed and we have democracy all over India and the whole country is integrated into one whole, there is a tendency on the part of the Government at the Centre to keep the people of the States under tutelage.

Now, when it comes to the intelligence of the people of the States as voters, I would say—and I am very well acquainted with my province—that there is no difference between the intelligence, the awareness of the general electorate in the provinces and in the States. If you consider that the electorate's ignorance results in this kind of nominations and directions from the Centre, then I would say it was a mistake on our part to introduce adult franchise in our Constitution I would say that if we do not have any belief in the people, then let us have adult franchise gradually. Of course, personally I do not share that view. I say that as an argument only. I believe that once democracy is introduced, if people make any mistakes, they will immediately learn from those mistakes, and that is the way democracy can grow and that is why, speaking from my experience not only in my own province and in the States of Orissa but also in Rajasthan and parts of Madhya Bharat, this is a retrograde measure, this article 306 B Sardar Vallabhbhai has accomplished the integration of the whole country into one whole and has got rid of autocracy in such a short time. This retrograde article 306 B will detract a great deal from the good that he and the States Ministry have done.

I said at the beginning that I am in a minority of one because I do not belong to the party that dominates this Assembly. I was in the party, I have come

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out lately; that is why I am speaking, I am free to speak. But I wish to give you this warning, to honourable Members of this House, and to the Government, that unless this step-motherly attitude towards the people of the States is removed and they are allowed to function just the same as the people of the provinces are functioning or will function under the new Constitution in the future, unless the States people are given the same rights as the people in the Provinces are, I do not think this democracy will grow. Anything may happen in future. There may be troubles in these States Union Ministries, there may be a blow-up somewhere, at any rate democracy will not grow.

That is why I appeal to the Honourable Members of the House as well as to Sardar Vallabhbhai that if it is necessary to have this article 306 B, it should not be put into action in any of the States. I feel that if the Government of any State breaks down, provision has been made in articles 275, 276 and others which will be applied to the Provinces and these might as well be applied to the States Unions. That is why I think 306 B is not necessary and if it is passed, as have no doubt, it will be passed, my appeal to Sardar Vallabhbhai and the Government of India is that it should not be put into action. If there is anything wrong in any of the Union Governments it should be set right by persuasion.

Shri K. Chengalaraya Reddy (Mysore State) : Mr. President, Sir, it gives me great pleasure to make a few general observations in connection with the proposal that has now been placed before the House. The proposal is that Part VI of the Constitution which applies to the States enumerated in Part I of the First Schedule should also be made applicable to the States to be mentioned in Part III of that Schedule with such modifications and omissions as may be called for in the circumstances in which the States are placed. It is a matter of supreme gratification to me that towards the concluding stages of the work of this august Assembly this decision is being taken.

When this Assembly started its work it was a matter of grave doubt whether a common Constitution would at all be possible for all the units comprised in the Dominion of India. It was assumed and admitted that so far as the Indian States are concerned the Constitution for those States should be framed by the respective Constituent Assemblies of those States. It was in pursuance of that decision that Constituent Assemblies came into existence in some of the States and those Constituent Assemblies started their task of framing constitutions which were necessary for their particular States. But let me here recall the attempts made by the representatives of the Mysore State as also the representatives of some other States to bring about a procedure by means of which a common Constitution could be adopted for these States also.

As early as August 1947 when the representatives of some of these States came to this august House as Members, a serious attempt was made to set up a Committee of this House to evolve a model constitution which would be applicable to the Indian States with a view to incorporate such a constitution in the body of the Indian Constitution itself. But at that time it was not found either feasible or practicable and we were called upon in our respective States to frame our own constitutions. Even then when we started our work, we were conscious of the supreme necessity that such separate constitutions should be in consonance with the Indian Constitution and should be in accordance with the Aims and Objectives Resolution of the Indian Constituent Assembly. Even, when we had been given the opportunity and freedom to frame our own constitutions that was the stand that we had taken. And it is because of that background that I say now that it is a matter for supreme gratification for the people of the Indian States—at any rate I can speak authoritatively for the people of Mysore that this decision is about to be taken august House.

Well, Sir, we are face to face with a situation which all the statesmanship that the country can muster in order to make the freedom that we have won secure and stable beyond any risk whatsoever. It has always been felt that any variegated patterns of constitutions in several units would bring about disunity and some amount of working in different, diverse directions. It has been conceded now that the constitution for the Indian States also should be more or less uniform and be on the same lines as the constitution for the Provinces. In this connection I want to pay my humble tribute and congratulations to the Ministry of States and to Sardar in particular for the dexterous way in which this complicated problem of the Indian States has been tackled ever since August 15, 1947. The situation with which we were faced at that time was one full of potentialities for mischief, full of opportunities for the disintegration of India, full of possibilities for making the freedom that had been won being diverted into wrong channels. But for the statesmanlike handling of this problem I am afraid the opportunities that had been given for fissiparous tendencies to manifest themselves would have struck a mortal blow at India in its very infancy of freedom. So, I join in the chorus of tributes and congratulations that have been extended to the Ministry of States and to the Sardar in particular from all over the world at the magnificent way in which this problem has been handled. It has been rightly claimed that what we have achieved today is a bloodless revolution, an achievement unparalleled in the history of any country at any time. Today we are proud of the fact that we are hammering out a Constitution which ensures for the first time in the history of India a united democratic and virile nation. Towards, this consummation as has already been pointed out the co-operative enterprise of the people of the States as well as of the people of the Provinces has been responsible, and for the first time in the history of India a people's polity based on the sovereignty of the people is coming into existence. So, I think there will be no difference of opinion anywhere in this country, in any State whatsoever, difference of opinion regarding the propriety or the desirability of having a common Constitution for all parts of this Union.

Having said that, Sir, I would like to refer to some details regarding the proposals that have been placed before this House. In the main, I am in agreement with the proposals that have been placed and most of the draft amendments that have been now put before the House should not be difficult of acceptance by all the representatives in this House, including the representatives of the Indian States. The general position is that so far as the various rights, powers and responsibilities that have been given to various authorities in Part VI of the Constitution are concerned, the same powers are to be given to the corresponding authorities in the Indian States. There are some differences however, for which provision had to be made. It was never in doubt that so far as Fundamental Rights and citizenship rights are concerned, there would be no difference between unit and unit. But so far as the internal constitution is concerned it has become necessary to make some modifications. I would like to briefly touch upon them in order to clarify the position, because it has been asked by some honourable Members: "if you are for a common constitution, why do you want these modifications? Why do you want Part VIA at all?" it is lot difficult for me to answer that question. But the lucid and comprehensive statement that has been made by Sardar Patel yesterday with regard to this matter is a convincing answer to such questions.

First, Sir, the one modification that has been found necessary is with relation to the constitutional head of the States concerned. In the provinces the constitutional head is to be the Government of that State. But, so far as the Indian States are concerned this cannot be the position, because the facts of history, the inexorable existing circumstances, necessitated a different arrangement to be made. It is because of that certain other provision had been made and a modification, an amendment, is placed before this House so far as

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the Indian States are concerned, it will be the Rajpramukh that will be the constitutional head of those particular States. It should be clearly understood that so far as the powers of this Constitutional Head are concerned—by whatever name you may call him—they are absolutely identical with the powers that are conferred on the Governors in relation to the provinces. So, though a Rajpramukh is recognised as the constitutional head, the powers that he will be exercising will not be a bit more or a bit less than the powers that the Governor will exercise.

Regarding the definition of the word there is some difference of opinion. It has been urged that since the word 'Rajpramukh' means that he is a Pramukh amongst several other Rajas it may not be quite appropriate with regard to such States where there is only one ruler. This is sought to be got over by the definition of the word "Rajpramukh" which will be duly placed before the House. The definition recognises the differences existing in various States and says that so far as Hyderabad is concerned "Rajpramukh" will mean the Nizam of Hyderabad. So far as Jammu and Kashmir and Mysore are concerned, it will mean the Maharaja, subject to the stipulation that they should be recognised as such by the President of the Union. There is nothing surprising in this. There was a stipulation of recognition even under the old set-up when the British Paramount power was here and there is nothing of a very different nature that is proposed now. So, though a more appropriate word could have been found for the constitutional head of the States, in view of what has been embodied in the covenants that have been already entered into, where the word "Rajpramukh" has already been used, it is proposed to retain that word.

So far as legislative powers are concerned, there is no differentiation whatsoever. The field of legislation so far as the provinces and Indian States are concerned, will be exactly identical and uniform and I need not advert to that aspect at any length.

Regarding the financial arrangements, Sir, I would like to say only one word. There also, the basis on which we are proceeding is that the relationship between the provinces and the Centre and the relationship between the Indian States and the Centre should be identical. When this principle is to be implemented, it will naturally mean certain dislocation in the finances of the Indian States. During the last few months attempts have been made in order to bring about some arrangement which will secure the implementation of the principle of uniformity and at the same time provide for the non-dislocation of the finances of the Indian States. The Federal Finance Integration Committee, presided over by Sir V. T. Krishnamachari, has gone into this question fully and almost all the States have provisionally signed the agreements in this behalf. In this connection, I want to urge one aspect. The arrangement that will be entered into by the States with the Centre is proposed for a period of ten years only. I want strongly to urge that this period of ten years may well be extended to a period of fifteen years in order to enable the Indian States to tide over the difficult situation that they will be faced with as a result of the Federal financial agreement. This proposal has already been mooted in the concerned quarters and I hope this suggestion of ours will receive the very earnest and sympathetic consideration of the authorities.

Then, Sir, regarding the redistribution of boundaries of States there has been some difference of opinion. Originally clause (3), as it was passed by this august House, provided for the ascertainment of the views of the Legislature so far as the provinces in Part I were concerned and the consent of the States in so far as the States in Part III were concerned. The Mysore Constituent Assembly was of the view that in so far as the Indian States are concerned, the previous consent of the States may be obtained before any redistribution

of boundaries. I need not go into the reasons which actuated the Mysore Constituent Assembly to come to this decision and to make that recommendation. In view of the fact that so far as provinces are concerned the ascertainment of views only was sufficient, it has been put before us that even so far as States are concerned, such a procedure would be satisfactory and there need be no differentiation regarding this particular matter as between the provinces in Part I and the States in Part III. I do not want to pursue this point further, excepting to invite the attention of the House to the Statement made by Sardar Patel yesterday. He has definitely stated that whether it be the consent of the Legislature of the State or the views of the Legislature of the province, the wishes of the people will not be ignored whenever any redistribution of the territories has to come about. He has also stated that the wishes of the Legislature of a particular State will not be ignored either by the Government of India or by the Parliament. In view of that assurance I do not want to pursue this point any further.

I want to refer to one more important aspect before I conclude. The whole object of the proposal that is now placed before us is to secure uniformity in relation to the Provinces mentioned in Part I and States in Part III. It is against this background, Sir, that the Sardar has said that there has naturally been some misgiving in relation to the proposed draft article 306 B. Different opinions have already been expressed on the floor of this House by honourable Members. I must respectfully submit that *prima facie*, this article 306 B provides for a differentiation as between Provinces and States. So naturally one is tempted to put the question "why this differentiation?" If the object is to treat the Provinces and States alike then why subject these States in Part III of the Schedule to the general control envisaged in article 306 B, I will be failing in my duty if I did not point out that so far as the Mysore Constituent Assembly is concerned, it was of the unanimous opinion that so far at any rate as Mysore was concerned this article should not be made applicable to it.

Well, Sir, we the people of the States have always been urging and agitating for a common Constitution on the assumption that there would be no differentiation between the Provinces and the States. Now, seemingly this article 306 B brings about a differentiation. At the same time, I want to say this namely, that in our approach to this problem we have always been actuated by the dominating desire that the security and stability of India should not be jeopardised to the smallest extent. We want to consider every proposal that may be placed before us from that fundamental point of view. If the Ministry of States feels that under the present circumstances some such power is necessary in order to stabilise the position, in order to make democracy firm, and in order to place it on a firm footing in any of the States, then I would not like to question the wisdom of the Ministry of States in that respect. But it has to be borne in mind that this clause cannot be made uniformity applicable to all the States enumerated in Part III.

I am speaking only for Mysore on this occasion. Mysore has been known to have an ordered administration since the last so many decades. Mysore is known to have a permanent service of which not only Mysore but even India may be proud. Mysore was the first among Indian States—and may I say among the Provinces as well—to have a democratic House so early as in 1881. In 1907 another House called the Legislative Council was ushered into existence. So through all these decades the people of Mysore have been used to the working of democratic institutions. It is a fact that so far as the executive is concerned, there was a Diwan and the Diwan was the sole executive authority. But it can not be gain said that Mysore during all these decades has had experience of democratic institutions.

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In view of that it would not be proper and desirable to bring a State like Mysore under the provisions of article 306 B The Sardar has been pleased to say in the statement that he made to the House yesterday that it is obvious that so far as Mysore, Travancore and Cochin are concerned, where democratic institutions have been in existence since a long time and where Ministers have been owing responsibility to the legislature they have to be treated on a different footing. It is my fervent hope that even in relation to the other States mentioned in part III of the Schedule it would not be necessary to invoke the aid of the powers that are vested in the Centre by article 306 B. Sagacity and statesmanship on the part of our leaders as also the willing co-operation of the people of the Indian States have brought us to a stage when we can be proud of the achievements that we have secured so far. I hope that even in the future, though this article 306 B may go into the Constitution, it will not be necessary for the Centre to invoke the aid of this article either *suo motu* or because, of other considerations. I hope that this article will be more or less a dead letter in the Constitution. In any case I expect that 306 B will not be applied to the State of Mysore.

I do not want to take more time of this House. It has been said yesterday that the co-operative enterprise of both the people of the States and the Provinces has been responsible for this consummation. We are all proud of that; we all share in the joy of that. And I have already paid my humble tribute and congratulation to the States Ministry for this achievement. But a greater task still lies ahead of us. This co-operative enterprise has to be sustained in order to usher in what I may call Swarajya. Social and economic democracy has yet to be achieved and the political freedom that we have won and the Constitution that we are framing should be worked out in such a manner as would redound to the honour of India, and I have every confidence that the same enterprise, the same co-operation and the same steadfastness will be forthcoming in abundance in the future also in order to make this Constitution a great success in its actual implementation.

With these few observations I commend in general the amendments that have been placed before this House by the Drafting Committee and I would also appeal to the concerned authorities to be pleased always to consider the special conditions that may be existing in any State when applying the provisions of this Constitution as they are going to be passed very shortly in this House.

SHRI JAINARAIN VYAS (United State of Rajasthan) Mr. President, Sir, we heard the masterly statement of Sardar Vallabhbhai Patel that was read out to us yesterday. We also heard the brilliant speech of Dr. Pattabhi Sitaramayya, our Congress President, supporting the statement and Praising Sardar Patel for what he has done for the people of the Indian States. We have also heard some speeches from honourable Members of this House including that of Mr. Sidhwa who characterized the people of the States as a backward class.

Shri R. K. Sidhwa : I did not say that all States were backward class.

Shri Jainarain Vyas : I am very glad that he did not think us like that. We may be backward, but I may assure you Sir, and through you the Government of India, and specially the State Ministry, That we are grateful people also, and we are grateful to the Honourable Deputy Prime Minister, Sardar Vallabhbhai Patel for the changes he has brought in the country by diminishing, the number of states from 562 to seven.

I do not want to say much about the amendments, but I will restrict my remarks to article 306 B. On the face of it, as everybody has remarked, this article seems to be obnoxious and it looks as if it has been designed to put the

people of the States—that is, the administration of the States—under surveillance for ten years. But after hearing the statement of Sardar Vallabhbhai Patel we have to desist from opposing it. He has referred to so many factors and I as one who has got some experience of the working of the States, and working for a short time in the administration of a State, know that inexperience on the part of administrators has played some part in the framing of this article. Then, there may be some faults, real or imaginary on the part of the administrators, but there are other factors also that have contributed to the framing of this action. In the States as Mr. Sidhva and others perhaps do not know, there are intrigues. We may not be able administrators but in the State there are intrigues such as those not seen in the provinces, intriguing, carrying on whispering campaigns and playing all dirty tactics. These people are there and if the Government of India safeguard the interest of the administration as a whole against those intrigues, well, I cannot blame them for that.

Then there is one thing which I want to refer to, and it is that the unification of the States has been brought about, so early that so many details have not yet been worked out. There ought to have been pre-planning but there was no time for pre-planning and as such the States are in the process of being formed they have not been totally formed in from that point of view also some supervision seems to be necessary. I was one of those, Sir, who agreed that this supervision should last in those States which have not got legislatures and should last till such period as the legislatures are formed and after the formation of the legislatures these restrictions or supervision or control of the Centre should go but the period has been extended to ten years. But as Mr. Reddy has just pointed out. I hope this period would not be utilised for controlling the State administration. As a matter of fact, we ourselves, who are in the States would see that this restriction, control or supervision is not applied to us.

The difficulty with the States was that the people of the States were not given an opportunity. One of the speakers pointed out that there were restrictions on opening libraries in the States. It is a fact, Sir, I go a step further and say that there were restrictions in opening schools, even boarding-houses; and for a people who have got restrictions to open schools, libraries, boarding-houses, to read and conduct newspapers, it is very difficult to understand the ways of the world; but in spite of that, I may tell you that ever since, the States Peoples Conference was created in 1927, there is a great deal of awakening in the Indian States and the people are not as they used to be before 1927. Given an opportunity, I can assure you Sir, the people would not lag behind the people of the provinces on the contrary, I am afraid after ten years or even before ten years, a time may come when the people of the States may say that some of the provinces are very backward and some restrictions may be imposed upon them and not upon us? That time may also come, Sir.

When people refer to general backwardness of the States, well, I feel a bit pained, There are States which may be backward and there are States which have become backward on account of certain reasons, but then there are States which are more forward than even the provinces. Take for example the State of Mysore, the State of Travancore and Cochin. I do not want to name the provinces near about or on the East or on the North or the South or the West but some of the States are better administered. If you see from a cultural point of view some of the States have better seats of culture, better buildings, better accommodation, better facilities for the people. In my own State, Sir, no I am very sorry, in my own division, which is a part of the Rajasthan now, there were famines and famines and famines. We did not allow Jodhpur to be made Bengal. We saved the people; we spent a lot of money on them, not only thousands and lakhs, but crores and those who think we may not be very forward from a

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democratic point of view will realize that from a humanitarian point of view the States were far ahead of many provinces and I can assure you that given an opportunity we will retain that culture and that humanity which we retained when the provinces perhaps forgot these things.

There are one or two things which I want to point out and that is that in the States we have got feudal elements. In the Division in which I live now, 90 per cent. of land is under feudal landlords and some of them personally are very good people; but taken as a whole the feudalism in Rajputana may play a very nasty part in the future of the nation. I would request Sardar Patel to take note of this fact and while controlling or supervising the administration of the States, he will see that these feudal elements are kept under proper control.

Another point which I want to refer to, Sir, is that the princes have been now given the right of citizenship and the right of rulership has perhaps been taken away from them in a way. This right of citizenship may also react against the people in some cases. I do not say that they should be refused human rights, but as restrictions have been placed upon the administration for ten years, I think restrictions should be placed upon the right of citizenship of the princes as well; otherwise given an opportunity to have a free play, they will use all the means at their disposal, all the weapons at their disposal to monopolise the administration of the States through other means. I hope, Sir, this point would also be taken into proper consideration when controlling and supervising the administrations.

I do not agree with Mr. Sidhva when he says that the States cannot find administrators. (Interruption.) Not in all States, I am glad to be told, but in some of the States. The difficulty as I pointed out was that the States could not have the legislatures and could not have the democratic traditions which the provinces had. Given that opportunity, I can assure Mr. Sidhva that the States, will give better administrators than the provinces have given to you. Can you forget Mahatma Gandhi? He was born in a State, mind that. We cannot forget Sheikh Abdullah. When the country was in difficulty and when the enemy was four miles away from Srinagar and when the army had gone away from Srinagar, he saved Srinagar, he saved the Hindus and he made a name. We cannot forget Sir S. Viswesvarayya, that famous administrator to whom a part of efficiency in the administration of Mysore is due. Well, the opportunity has not been given and we want that opportunity to be given. (Interruption). It be given because it is we Who Could take the opportunity. One thing which we have done is this: We have finished with the sovereignty of the rulers, and the second thing is that the rulers would not directly claim their salaries and their allowances also from the States now. Let them settle their accounts with the Centre. So the rulers have no power to interfere in the administration of the States, in the finances of the States, and that thirty has been achieved. I also feel like others that we need a certain amount of control which has not been imposed upon the princes. I am sure when we create legislatures in our States, we will give you administrators and legislators and we would not give an opportunity to Sardar Patel to control or supervise in the way that article 306 B is supposed to control us.

With these words, I generally support the amendments put forward and I offer my grateful thanks to the Honourable Sardar Patel for the statement which he made and which was, as I said, masterly and which leaves scope for the people of the States to improve their lot even before ten years. I thank once again the States' Ministry and I thank you, Sir, for giving me this opportunity for expressing my views.

Kanwar Jaswant Singh (United State of Rajasthan) : Mr. President, Sir, I am grateful to you for this opportunity that you have given me to express my views on Part VI-A. After the statement of the Honourable Sardar Patel yesterday, there is not much for the representatives of the States to say. Therefore, I will confine my remarks to the few essential things.

First of all, in article 211 A. clause (4) sub-clause (b), it is stated that the Rajpramukh shall be entitled without payment of rent to the use of his residences. In regard to this, I would submit, Sir, that practically in all the States the Rajpramukhs have got their own residences and therefore the question of the payment of rent does not arise. This point may therefore kindly be taken into consideration by the Drafting Committee when they finalise the thing.

In regard to clause 10(b), provision has been made in the case of the Sate of Travancore Cochin for a sum of Rs. 51 lakhs to be paid to the Devasom Fund as entered in the covenant from the exchequer of the union. There are other States also where such sums are spent on the Devasthan Department. I know for instance that in the Union of Rajashtan, a collateral letter has been sent to the Maharana of Udaipur where a large sum has been guaranteed for being spent on the Devasthan Department. This provision should, in my opinion, be included here when it has been done in the case of one State.

Then Sir coming to article 302A and article 267A about guarantee of Rights and privileges and Privy Purse Sums of Ruler of Indian States, this is a matter of great satisfaction. In view of the services of the Rulers and the patriotic manner in which they have accepted the advice of our venerable leader Sardar Patel their position should receive due recognition. They have parted with their power and kingdoms so gracefully and it is only in the fitness of things that these rights and privileges and privy purse without payment of Income-Tax should have been guaranteed in the Constitution.

Then comes the question of article 306 B With regard to this, Sir, though coming from a State, I welcome this provision. It is a very wholesome provision, so far as some of the States Unions are concerned. It may be that for advanced States like Travancore and Mysore, such a provision may not be called for. So far as my province is concerned, that is Rajasthan, I feel that without such a provision, the security of the country may some time or other be jeopardised. The reason why I consider that so far as Rajasthan is concerned such a provision is essential is that, in the first instance, it is a border State on the border of Pakistan; and in view of the strained relations between the two Dominions, it is essential that there should be vigilance on the border and Central control is very necessary. Secondly, in view of the fact that a new Ministry has been installed there, who, though belonging to a political party, have very little experience and political background, and as stated by Sardar Patel in his statement yesterday, in view of the varying degrees of development of the political organisations in States, it is necessary that there should be such control.

Further, Sir, we have seen the working of the Ministry in Rajasthan for the last six months, and that is all the more reason why we feel that such a provision is absolutely called for. The Prime Minister and the other Ministers have been visiting the different places which were formerly the States. What they have been doing is this. They arrive and address public meetings; they abuse the rulers and abuse the jagirdars and do propaganda work. Beyond this, they do not do any substantial work. This is just in contrast of what our revered leader Sardar Patel does. He has missed no occasion to shower praises on the Rulers for the

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patriotic manner in which they have divested themselves so gracefully of their power and their kingdoms. But unfortunately, because of lack of experience and political wisdom, and large-heartedness our local leaders do not recognise the willing sacrifices of the Princes. They feel that the past bad relations should continue. They have false notion of their position. They feel that as in the case of Rulers in the past, they should also display pomp and power. They feel that by doing so they will be able to enhance their prestige and strengthen their position among the people.

My predecessor who came here, Pt. Jainaram Vyas, referred to the question of jagirdars. I assure the House that the jagirdars are, first and foremost, Indians. Unfortunately or fortunately, I happen to be one of the jagirdars. I may assure you if our question is tackled tactfully by some eminent leader as Sardar Patel, when the complicated question of the Princes could be solved so satisfactorily, the question of the jagirdars in Rajasthan or anywhere else could more easily be settled and there should be no difficulty whatsoever. The Princes and we who have been so closely associated with the Princes are as much loyal Indians as anybody in this country, and yield to none in our patriotism and if our patriotism is put to the test in case of need, we will not be found wanting in any way.

With these words, I resume my seat.

Shri P. Govinda Menon (United State of Travancore & Cochin) : Mr. President, Sir, I rise to support the motion for incorporating Part VI-A in the Constitution, dealing with the Indian States and in doing so, I wish to express before this House certain thoughts which come uppermost in my mind on this occasion.

I would, first of all, like to say this, that regarding the provisions in Part VI-A, regarding certain amendments that might be required in the provisions proposed to be included with respect to the States, much has been said on the floor of this House yesterday and today. But, before walking into that field, I wish to point out to this House the big step that has been taken by this House in deciding to incorporate a provision like this. When this motion made by Dr. Ambedkar is accepted by this House, I submit, Sir, the House would have recorded and registered one of the most phenomenal events which have taken place in the political history of India in recent years. The House can be proud of the work it has done hitherto; but I request the House to consider what this Constitution would have been, had there been no part like Part VI-A.

When power was transferred to India, when this Constituent Assembly was called to assemble, there was in existence a Constitution for the provinces of India—the 1935 Act. We have mostly adapted the provisions of this Act for the future Constitution of India with certain additions regarding Fundamental Rights, Directive Principles, abolition of separate electorates, etc. But I do submit that the decision to incorporate Part VI-A is registering the most important event that took place, viz., the complete integration of Indian States with the rest of India. Under the 1935 Act, a sort of hybrid Federation was thought of for India and protracted negotiations were carried on by the Crown Representative with the Princes in order to bring them into the Centre. These negotiations were finally dropped with the commencement of hostilities in 1939 and thereafter the old regime continued. In 1946 the Cabinet Mission came and later the Independence Act was enacted and that left the Indian States in a sort of Independence.

It was in this context that this Constituent Assembly met late in 1946, and I wish to recall the fact that when the Constituent Assembly met for the first time the representatives of the Indian States did not find a place in this Assembly.

A Negotiating Committee was appointed by this Assembly. That was one of the first acts done by this Assembly. They negotiated with representatives of the Indian Princes to persuade the Indian Princes to send their representatives to the Constituent Assembly and while those negotiations were going on, parallel attempts were being made in certain quarters to sabotage the Constituent Assembly plan. But thanks to the vision of our leaders, thanks to the vision of certain statesmen in the Indian States, thanks to the aspirations of the Indian people to co-operate with India in the formation of an Indian Constitution for the whole of India, we found that a dozen members representing the Indian States sat in the Constituent Assembly in April 1947.

When that happened the situation with respect to Indian States was not defined. It was in a fluid state. Those of us who have got the printed text of the Indian Draft Constitution prepared for us would note, if we glance through the various articles there, that at that time it was thought that the Indian States will stand apart. You find so many references in the original draft Constitution to States in Part III, to States in Part V, various agreements under which alone States in Part III could join the Indian Union. That was the position in 1947. At that time, as was referred to by Shri K. C. Reddi Constituent Assemblies were brought into existence in several Indian States and the procedure which was followed in this Assembly was attempted to be repeated in the various Constituent Assemblies in the Indian States. Objectives Resolutions were passed, Minorities Committees were appointed and Drafting Committee were appointed, etc., etc.

But then with the grant of freedom to India or rather with the attainment of freedom by India, the situation that developed in India was a dynamic one—it was not a static one and the Indian leaders were really wise in not crystallising conditions as they obtained on the date of transfer of power in India. It was at this stage that a Committee was appointed—the Rau Committee—popularly known as the Model Constitution Committee. That Committee was appointed to suggest what shall be the form of Constitution for Indian States and in the membership of that Committee a majority was from the Indian States. The Report of that Committee was that the Constitution for Indian States should be as far as possible on a par with that for the provinces and it was further stated that the best way to effectuate this proposal will be to have a Chapter in the Indian Constitution showing the modification which must apply to the Chapter regarding provinces. It was in view of this suggestion that we are now proposing to incorporate Part VI-A in the Indian Constitution.

I must at this stage try to disabuse a notion which I find exists in the minds of certain people—not alone in the Indian States, but also in what are called the provinces. The notion is that this attempt or this idea to incorporate a part in the Indian Constitution to govern the Indian States has come from above, that it is an imposition from the Ministry of States, and that the people of the States are taking unwillingly what has been imposed upon them. I wish to declare here and now that that idea is wrong. The people of the Indian States have from the beginning of the struggle for Indian Independence joined hands with the people of the provinces and it is on account of the fact that the statements made by the Cabinet Mission in 1946 and the Indian Independence Act and the Constituent Assembly as planned by the Cabinet Mission did lay down a different procedure for the Indian States that Constituent Assemblies came into existence in the Indian States. I recall at this juncture a meeting which took place in Mysore in 1946 during the days of the Cabinet Mission, which was attended by representatives of Indian States People's movements in Travancore, Cochin, Pudukkottah and Mysore. In that meeting a unanimous Resolution was passed by the representatives of the people that the Constituent Assembly for India should frame the

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Constitution for Indian States as well. That is to say, long before this plan was thought of by the Ministry of States the representatives of the people of the South Indian States assembled in Mysore in May 1946 and decided that it is the Indian Constituent Assembly which should frame a constitution for the Indian States. Thereafter as I submitted earlier, the Rau Committee also, which consisted of a majority of representatives from the Indian States, reported that it is this Constituent Assembly, representing as it does the will of the people of India including Indian States, that should frame the Constitution for India.

I will at this stage refer to the Resolution passed by the Legislative Assembly of the Travancore-Cochin State—a Resolution which that body, elected on adult franchise, thought it fit to pass at this stage. The Resolution reads as follows :—

“This Legislative Assembly of the United State of Travancore and Cochin, by virtue of its constituent powers hereby resolves:

- (1) that Travancore-Cochin State shall be one of the States in the Union of States, India, that is Bharat;
- (2) that a separate constitution for the Travancore-Cochin State is inconsistent with the aspirations of the people of the State and the status of the State as a Unit of the Indian Union;
- (3) that the provisions of the constitution for the governance of the State shall as far as possible be the same as those for the Units known as Provinces; and that the constitution of India framed by the Constituent Assembly of India shall be the Constitution which will apply to this State.”

After all this, it will be idle to think that the desire of the people of the Indian States is anything other than this, that the Constituent Assembly of India should frame a common Constitution for Indian States and the Provinces as well. The desire of the people of Indian States has always been that India should be united, that the Government of India should be the government for the Indian States and the Provinces.

Once this fundamental proposition is accepted, when once it is known that this is the desire of the Indian people, then all that has been done by the Ministry of States during the last two or three years will be found to flow logically from that decision. The decision that the legislative and executive field of the Centre shall extend to Indian States, the decision that there shall be Federal financial integration, and the decision that the Constituent Assembly of India should frame the constitution for the States, all of them, logically follow out of this idea. But even in spite of that, I must inform this House that among certain people, not alone in the Indian States, but also in the Provinces, there is some misapprehension about this idea. They look upon the Government of India with memories—with bitter memories which have been there in the minds of the Indian people regarding the exercise of paramountcy. I wish to make it clear that the paramountcy of the Government of India during the days of the British is different from the paramountcy of the Union Government which it must have if it is to be a Union Government. The Government of India before the 15th August, 1947, so far as the Indian State were concerned, was a foreign government which represented the sovereignty of the British. Therefore, whatever the Government of India did during those days was really an interference from outside. But once this Constitution is passed, the nature of the Government of India changes. The people from the Provinces should not think that it is a government of theirs only, and the people from the Indian States should not think that it is a government of somebody else. Whenever in the Constitution, and wherever in the Constitution, the words “Parliament”, “President” and “the Government of India” are used, it must be

remembered that these institutions denote or represent the sovereignty of the people of India, including the people of the Indian State. In other words, the Indian States and the Provinces are going to pool their sovereignty and to have a single undivided sovereignty in India.

By what happened on the 15th August 1947, every Indian States has got sovereignty and the Princes of the Indian States became Independent. By the result of the operations of the Ministry of States during the last two or three years, the sovereignty and the independence which the rulers of the Indian States got from the British have been transferred to the Indian people, to the people of the Indian States. That central fact must not be forgotten, and when during this debate one Member after another spoke about this defect and that defect in the programme of the Ministry of States, we forget that the Ministry of State has done a very important task during the last two and odd years, that is to say, to get transfer of power from the Rulers of the Indian States to the people of the Indian States.

I think, Sir, there is much in the contention that the benefit of the transfer of power should not be taken, without the conditions under which that transfer of power has been effected. Sardar Patel in his Statement yesterday, requested us to look at the picture as a whole, the scheme for the Indian States as a whole, and I think no reasonable man can take objection to that point of view. The people of Travancore have all along, and the people of other States have all along been advocating the sovereignty of the people of India, including the people of the Indian States.

Therefore, I feel extremely happy today. I enjoy the happiness of a man who has fulfilled a dream of his life, to note that by the introduction of this provision in the Constitution, we are going to have a united India where there will be practically no difference between the Indian States and the Provinces. There are differences in one or two respects, and they are well-known. Where we have Governors in the Provinces, we have got Rajpramukhs in the Indian States. There is some difference regarding their method of appointment. There is some difference regarding their emoluments. But beyond that, I for one do not see any difference between the Provinces and the Indian States under the scheme that has been placed before us.

Having stated so much about the general position, I would like to add one more point about my own State-Travancore- Cochin. Regarding some of the proposed amendments to be moved here, I endorse every one of the statements made by Sri K.C. Reddy, and I do not attempt to add anything, because I cannot do it better than he has done. Sardar Patel in his statement of yesterday did make a reference to Mysore, and Travancore-Cochin States and said that it is not intended that article 306 B should apply to States which have got a degree of progress like the Travancore-Cochin State and the Mysore State. I am thankful to the Sardar for having made that statement. May I add, at this stage, that Travancore-Cochin have had representative institutions from very early times? If I am not wrong, even from, 1860, there have been representative bodies in Travancore and from 1937 responsible government of a sort has been in existence in Cochin. Before any other State in India or any other province in India could introduce adult franchise, adult franchise was introduced in these two States, and exactly a year back election based on adult franchise took place in Cochin and about six months earlier an election took place in Travancore. I think I am right when I say that it is in Travancore and in Cochin that the Indian National Congress or its corresponding bodies had to face the electorate on adult franchise for the first time, and both Travancore and Cochin did bring credit to the Indian National Congress by securing huge majorities in the legislatures even when the elections were held on the basis of adult franchise.

[Shri P. Govinda Menon]

It was a due recognition of the progress made by those States, when Sardar stated yesterday that a provision like article 306 B is not intended to apply in the same degree to all the Indian States. That statement encourages me to hug the feeling or the consolation that, if all the Indian States in Part III of the Schedule were in the same degree of advancement, were in the same degree of progress; as Mysore and Travancore and Cochin, probably there would have been no city to incorporate a provision like 306 B

I wish to add this and then I will have done. Conflicting emotions are there in the minds of the people from the Indian States with respect to article 306 E. Coming from Travancore and Cochin States, we thought that it was unnecessary and in the Legislative Assembly we passed a resolution to that effect, but we are in possession of the conditions in Travancore and Cochin States only, while Sardar Patel and the Ministry of States have got in their possession the conditions in all the States and the provinces, and they think that a provision like this is necessary. If we accept what has been stated here, it is because that when opinions conflict, the man with the greater information and the longer experience should have the final say. As I said, at the same time we are grateful, indeed very grateful, that this difference in conditions in certain States has been recognised by the Minister in charge of the States. With these few words, Sir, I wholeheartedly support the amendments that have been tabled before the House. Thank you, Sir.

Shri Himmat Singh K. Maheshwari (Sikkim & Cooch-Bihar States) : Mr President, Sir, with your permission I shall take only two or three minutes of the time of the House, and I shall confine my remarks only to the amendment moved by my honourable Friend, Mr. Das, regarding the liability of certain allowances to income-tax. The proposals before the House guarantee the Continuance of Rulers' privy purses and their exemption from all taxes. The same immunity however is not extended to other allowances. The persons mainly affected by this are Rajmatas, widows of former rulers, who will enjoy their allowances for their life-time only. They will be hit very hard when they have their allowances reduced on account of deductions for income-tax and Super-tax. In the case of Maharanis and Ranis whose husbands are happily alive, the allowances will be exempt from income-tax as part and parcel of the Rulers' privy purses but should any of these ladies unfortunately become widows, their position, I believe, will still continue to be the same, *viz.*, that they will get their allowances from their sons and those allowances will be exempt from income-tax as part and parcel of the privy purses of the rulers. Therefore, there will be some sort of discrimination between the allowances enjoyed by Maharanis and Ranis whose husbands are alive, and the Maharanis and Ranis who lost their husbands before the present Covenants were entered into. In my opinion, Sir, the allowances of these royal ladies are not comparable to salaries. These are maintenance allowances. These ladies have lived in luxury and comfort in the past. They will now find their allowances reduced very radically on account of deductions of income-tax. The House is aware that even the allowances of the President, and the Governors and certain their dignitaries are going to be exempt from tax. Only their salaries are liable to tax, not the allowances.

I therefore wish to appeal to the Honourable the Deputy Prime Minister and to the House to take a chivalrous and generous view of this matter and not to make the limes of these few unfortunate ladies miserable for such short periods as are still left to them before they pass away. In some of the States, Sir, the position of these unfortunate ladies is already very unhappy. Their relations with their sons are strained. If their allowances are reduced substantially, they cannot expect any help from the present rulers. Their lot therefore will be extremely hard. I hope the House will take this into consideration in granting exemption at least to the widows in respect of income-tax and other taxes.

Mr. President : Mr. Gokul Lal Asawa.

Shri T. T. Krishnamachari : (Madras : (General) : The question may now be put.

Mr. President : I have already called him.

Shri Gokul Lal Asawa (United State of Rajasthan) : Mr. President, Sir, I wish to make one or two observations on this historic occasion destined to open a new chapter in the history of the people of the Indian States. After the frank, lucid and comprehensive statement of Sardar Saheb, I do not think there need be any difficulty or hesitation on our part in accepting the amendments put forward, particularly article 306 B I must confess here that I was one of those who opposed the incorporation of such a provision being made in the Covenant of the United State of Rajasthan, but today looking to the ways—and should I say irresponsible ways, to put it mildly in which the Governments of some of the Unions are behaving or working, finding that we are passing through a critical transitional period, realising that we are still not out of the woods—who can say definitely that there are no troublous times ahead? And above all keeping in mind the observations of Sardar Saheb with regard to the meaning and purpose of article 306 B, I see no justification for us to oppose the introduction of such a provision in the Constitution. Further, while the provision in the Covenant requires that both the Rajpramukh and his Council of Ministers shall, in the exercise of their functions, be under the general control of the Government of India, here under the present article we find that only the Governments of the States are to remain under general control. Now, this to my mind marks an improvement in the position.

One observation more and I have done. If I understand a right the feelings of some of us inside this House or outside, I may be allowed to say that what worried us most in the past and what worries us today somewhat is not so much the introduction of this principle of general control but rather its application, the working thereof: the mechanism and the technique for the exercise of general control, I mean the method, the manner and the range thereof. I hope those responsible for the exercise of general control, etc., will bear this important fact in mind.

Shri T. T. Krishnamachari : Sir, I move that the question be now put.

Mr. President : I do not think there is any other speaker. Mr. Munshi, will you reply?

Shri K. M. Munshi (Bombay : General) : Mr. President, Sir, after the exhaustive and brilliant survey of the whole question by Sardar there is no need for any detailed reply. I would only mention one or two matters. In the first instance, I shall beg the permission of the House to keep back 274 DD Some technical flaw is suggested and the Drafting Committee would like to re-examine it. Then, as regards the amendments, I am quite prepared to accept the two amendments moved by my honourable Friend Mr. Santhanam, Nos. 276 and 278. Except these two amendmens I oppose the other amendments that have been moved. Explanations have been given about them and there is no need for this House to entertain those amendments.

There are one or two matters which I should like to mention. As Professor Asawa said just now, article 306 B is a very useful measure and I am sure even those Members of the House who may have any compunctions about it will have been satisfied. The policy with regard to 306 B has been authoritatively laid down in the statement of Sardar and I do not think that anything more need be said. It has already been stated in the statement and I am free to submit my personal opinion that so far as Mysore and the Union of Travancore-Cochin are concerned, whose affairs I know personally, I see no reason why they should

[Shri K. M. Munshi]

attract article 306 B, unless they fall from that steady and stable administration which they have inherited from the Dewans of the past, and I am glad to say that the present set-up there promises to maintain the tradition.

Only two remarks from my Friend Mr. Jainarain Vyas, I should like to refer to. One of his points was that feudalism in the States should be controlled. It cannot be controlled by mere authority. It cannot be controlled by rooting them out either by law or by force. So far as their power and prestige are concerned, they have shrunk on account of the democratic set-up that has been introduced in those States but you cannot eliminate those elements—people must learn to make them—the feudal elements—stable elements in the society. Before this change there was some point in saying, “Oh, the feudal elements should be eliminated”, but those elements which have survived this revolution are as much citizens of the Republic as anybody else and it must be the duty of the other people, and particularly of the administration, to enforce the rule of law in such a manner that all the vestiges of feudalism disappear. It cannot be done at a stroke any attempt to do so will only recoil upon the infant democracies in those States.

A second point which he made was that the Princes should be denied the right of citizenship. We must realise once for all that every person born in India is a citizen of India. In making what Sardar called the ‘bloodless revolution’, we did not propose to produce outlaws. In view of what the Princes have done in the past and what they did in bringing about the bloodless revolution, this kind of attitude will, I am afraid, come in the way of a satisfactory solution rather than accelerate it. The set-up in the Indian States now has been completely changed and the masses on the one side and those who have been rulers in the past have to adjust themselves in the new atmosphere. It is only in that way that we can make this revolution a complete success.

Sir, I agree with my Friend Mr. Govinda Menon that this is an historic occasion and it makes me as happy as it makes him. I remember the early days in 1947 when my Friend Mr. Govinda Menon was the only man representing the States in this House who was insistent that the whole thing should go and the States should be integrated. I can easily realise the joy that he feels in seeing that what he aimed at is now attained successfully.

This is no doubt a historic occasion. Thanks to the genius of Sardar and his statesmanship we have integrated the whole of India. (Hear, hear). We have now an India which, even without Pakistan, is as large and much more integrated and harmonious and unified than ever before in history, and it is now for us, particularly the future Parliament and the future Government of India, so to consolidate all the different parts of the country that India may emerge a strong and compact nation. I feel happy also that the nightmare of the Indian States which have been a survival from Moghul and the British days is all gone and the sovereign people of India can now march forward from strength to strength and attain the cherished ideals which they have placed before the country in the Preamble to our Constitution.

Shri R. K. Sidhwa : Sir, may I know what Mr. Munshi has to say about my amendment No. 246 about the armed forces to be merged in the Union?

Mr. President : Do you accept that amendment?

Shri K. M. Munshi : I do not accept that amendment. I said I would not accept any amendment other than those two moved by Mr. Santhanam.

Shri R. K. Sidhwa : Cannot the armed forces of the States be merged in the Union Forces?

Shri K. M. Munshi : The section itself makes it clear that whatever forces are left in the States are part of the Union Forces. If honourable Members will see the Union List of the old Government of India Act of 1935, they will find that there was a separate heading called “The Armed Forces of the State” That entry has been omitted. There can only be one army now in India and that is the Army of the Union. By this article 246 these few contingents which are left in the States become integrated as part of the Union Army. But it will take some time to absorb them completely for organisational and other purposes. Till that time the whole thing has to be regulated by the President. At the same time, the article gives power to the Parliament to complete this process as early as Parliament thinks proper. Under the present conditions they could not be absorbed all at once and it must take time before they could be harmonised in every respect. That is the reason why article 246 has been drafted in this particular manner.

Mr. President : I will now put the various amendments that have been moved. The procedure which I propose to follow is this: I will take each amendment which has been moved by Dr. Ambedkar, take the vote on each separately and dispose it of. Then I shall put the whole part together.

Now, as regards amendment 217 article 211 A—there are several amendments. The first two are No. 237 and No. 238. These are the two amendments moved by Mr. Naziruddin Ahmed. They are more or less of a drafting nature, I wonder whether he wishes to have them put to vote. He is not here, so I will put them to vote.

Mr. President : The question is:

“That in amendment No. 217 of List VII (Second Week), in the proposed Now article 211 A, for the word ‘modifications’ the words ‘adaptations, modifications’ be substituted”.

The amendment was negatived.

Mr. President : The question is :

“That in amendment No. 217 of List VII (Second Week),—

- (i) in item (3) of the proposed article 211A, for the words ‘shall be omitted’ the words shall not apply to this part’ be substituted;
- (ii) in item (4) of the proposed article 211A. in paragraph (a), after the words ‘in clause (1)’ the words ‘for the time being specified in the First Schedule’ be omitted and be inserted.”

The amendment was negatived.

The Honourable Shri K. Santhanam (Madras : General) : In regard to my amendment No. 276 it has been suggested to me, Sir, that the words “Principal seat of Government” would be preferable to “Capital”.

Shri K. M. Munshi : It is a verbal amendment which I am prepared to accept.

Mr. President : There is one slight change which has now been suggested that in place of the word “capital” we should use the word “principal seat of Government”. I do not suppose there can be any objection to that. It is merely a verbal change. No. 276 has been accepted by Mr. Munshi.

The question is :

“That in amendment No. 217 of List VII (Second Week), in item (4) of the proposed article 211 A for paragraph (b) the following be substituted:—

- (b) for clause (3) following clause shall be substituted, namely:—

[Mr. President]

- ‘(3) Unless he has his own residence in the principal seat of Government of his State the Rajpramukh shall be entitled to the use of an official residence without payment of rent and there shall be paid to the Rajparamukh such allowances as the President may, by general or special order, determine.’

The amendment was adopted.

Mr. President : We now come to the amendment No. 287 moved by Mr Guruv Reddy.

Shri H. R. Guruv Reddy : I do not want to press it, Sir. The amendment was by leave of the Assembly, withdrawn.

Mr. President : We now come to No. 292.

Kaka Bhagwant Roy (Patiala & East Punjab States Union) : I would like to withdraw that amendment of mine, Sir.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is:

“That in amendment No. 217 of List VII (second Week), in paragraph (a) of item (10) of the proposed article 211A, for the words ‘the President by general or special order’, the words ‘Parliament by law’ be substituted.”

The amendment was negatived.

Mr. President : In regard to amendment No. 278 there is an amendment No. 293) moved by Professor Saksena. I shall first put that to vote.

The question is:

“That in amendment No. 278 of List X (Second Week), in clause (1) of the proposed article 197, for the words ‘President after Consultation with the Rajpramukh the words Parliament by law be substituted.’

The amendment was negatived.

Mr. President : No. 278 has been accepted by Mr. Munshi.

The question is:

“That in amendment No. 217 of List VII (Second Week), in item (13) of the proposed article 211 A, for article 197, the following be substituted:—

197. (1) there shall be paid to the judges of each High Court such salaries as may be determined by the “Salaries,” etc., of judges. President after consultation with the rajpramukh:

- (2) Every judge shall be entitled to such allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament and, until so determined, to such allowances and rights as may be determined by the President in consultation with the Rajpramukh :

Provided that neither the allowances of a judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment’.”

The amendment was adopted.

Mr. President : The question is :

“That in amendment No. 220 of List VII (Second Week), in clause (1) of the proposed new article 235A, for the Words ‘until Parliament by law otherwise provides’, the the words “until the President by order otherwise provides’ be substituted.”

The amendment was negatived.

Mr. President : The question is:

“That in amendment No. 217 of List VII (Second Week), in item (13) of the proposed article 211 A. the words ‘after consultation with the Rajpramukh’ be deleted from article 197”.

The amendment was negatived.

Shri R. K. Sidhwa : I beg to withdraw my amendment No. 246.

The amendment was by leave of the Assembly, withdrawn.

Mr. President : The question is:

“That in amendment No. 220 of List VII (Second Week), in clause (2) of the proposed new article 235A, the words ‘and the Union shall bear the expenses thereof’ be added at the end.”

The amendment was negatived.

Mr. President : The question is:

“That article 237 be deleted.”

The motion was adopted.

Article 237 was deleted from the Constitution.

Mr. President : The question is:

“That in amendment No. 223 of List VII (Second Week), in the proviso to the proposed new article 274 DDD, for the words ‘President may by order’ the words Parliament may by law’ be substituted.”

The amendment was negatived.

Shri T. T. Krishnamachari : Article 274 DD may be held over, Sir, to a subsequent day.

Mr. President : I shall put now article 302A to vote. The question is:

“That after article 302, the following new article be inserted, namely :

302A. In the exercise of the power of Parliament or of the Legislature of a State to make laws or in the exercise of the executive power of the Union or of a State, due regard shall be had to the guarantee or assurance given under any such covenant or agreement as is referred to in article 267A of this Constitution with respect to the personal rights, privileges and dignities of the Ruler of an Indian State.’”	Rights and privileges of Rulers of Indian States.
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The motion was adopted.

Article 302A was added to the Constitution.

Mr. President : I shall now put the amendments to article 306-B. Part (ii) of No. 251 is disallowed as being out of order.

The question is:

“That in amendment No. 225 of List VII (Second Week), in the proposed now article 306 B,—

the words “during a period of ten years from the commencement thereof, or during such longer or shorter period as Parliament may by law provide in respect of any State”, be deleted.

The amendment was negatived.

Shri R. K. Sidhwa : I would like to withdraw my amendment No. 252.

The amendment was by leave of the Assembly, withdrawn.

Mr. President : The question is:

“That in amendment No. 225 of List VII (Second Week), in the proviso to the proposed new article 306 B, for the words ‘President may by order’ the words ‘Parliament may by law’ be substituted.”

The amendment was negatived.

Mr. President : There are some amendments to amendment No. 299. I shall put the first amendment by Prof. Shibban Lal Saksena.

The question is:

“That in amendment No. 299 of List XIII (Second Week), at the end of the proposed clause (1) of article 258, the following words be added :—

‘after that agreement has been approved by Parliament.’”

The amendment was negatived.

Mr. President : I shall put the second amendment of Prof. Shibban Lal Saksena, which, I think, is the same as amendment No. 300 by Shri V. T. Krishnamachari.

The question is:

“That in amendment No. 299 of List XIII (Second Week), sub-clause 3 (a), (b) and (c) of the proposed clause (1) of article 258, be relettered as sub-clause 3 (b), (c) and (d) of that clause and the following be inserted as sub-clause (a) :—

‘(a) questions arising from or connected with the vesting in the Union of assets and liabilities of such States related to any of the matters enumerated in the Union List.’”

The amendment was negatived.

Mr. President : There are two amendments by Prof. Shibban Lal Saksena to the proposed new article 267-A. I shall put the first one to vote—it is really not an amendment but a deletion.

The question is:

“That in amendment No. 301 of List XIII (Second Week), sub-clause (b) of clause (1) of the proposed now article 267A be deleted.”

The amendment was negatived.

Mr. President : I shall put the second one.

The question is:

“That in amendment No. 301 of List XIII (Second Week), in clause (2) of the proposed now article 267A, for the words ‘by order of the President’ the words ‘by Parliament by law’ be substituted.”

The amendment was negatived.

Mr. President : I shall now put the amendments of Mr. B. Das.

The question is:

“That in amendment No. 301 of List XIII (Second Week), after clause (2) of the proposed now article 267A, the following new clause be added:—

(3) Where any sums are guaranteed or assured to any Ruler’s family members or relations, such sums be treated as part of privy purse and as free of tax.’”

The amendment was negatived.

Mr. President : The question is:

“That in amendment No. 301 of List XIII (Second Week), in clause (1) of the proposed new article 267A, after the words ‘to any Ruler’ the words ‘or his family relations’ be inserted.”

The amendment was negatived.

Mr. President : I shall now put the amendment of Prof. Shibban Lal Saksena to the proposed new article 270-A.

The question is:

“That in amendment No. 302 of List XIII (Second Week), in clause (1) of the proposed new article 270A, the words ‘and approved by Parliament’ be added at the end.”

The amendment was negatived.

Mr. President : I shall now put Part VI A as amended by the two amendments which have been accepted, namely Nos. 276 and 278.

The question is:

“That proposed Part VIA, as amended, stand part of the Constitution.”

The motion was adopted.

Part VIA, as amended, was added to the Constitution.

Mr. President : I will put new article 235-A to vote.

The question is:

“That after article 235, the following new article be inserted, namely:—

<p>235A. (1) Notwithstanding anything contained in this Constitution, a State for the time being specified in Part III of the First Schedule having any armed force immediately before the commencement of this Constitution may, until Parliament by law otherwise provides, continue to maintain the said force after such commencement subject to such general or special orders as the President may from time to time issue in this behalf.</p>	<p>Armed forces in State in Part III of the First Schedule.</p>
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(2) Any such armed force as is referred to in clause (1) of this article shall form part of the forces of the Union’.”

The motion was adopted.

Article 235-A was added to the Constitution.

Mr. President : The question is:

“That article 236, as amended, stand part of the Constitution.”

The motion was adopted.

Article 236, as amended was added to the Constitution.

Mr. President : The question is:

“That new article 274 DDD stand part of the Constitution.”

The motion was adopted.

Article 274 DDD was added to the Constitution.

Mr. President : I shall now put article 360-B.

The question is:

“That after article 306, the following new article be inserted:—

<p>306 B Notwithstanding anything contained in this Constitution, during it period of ten years from the commencement thereof, or during such longer or shorter period as Parliament may by law provide in respect of any State, the Government of every State for the time being specified in Part III of the First Schedule shall be under the general control of, and comply with such particular directions, if any, as may from</p>	<p>Temporary provisions with respect to States in Part III of the First Schedule.</p>
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[Mr. President]

time to time be given by the President, and any failure to comply with such directions shall be deemed to be a failure to carry out the Government of the State in accordance with the provisions of this Constitution:

Provided that the President may by order direct that the provisions of this article shall not apply to any State specified in the order.”

The motion was adopted.

Article 306-B was added to the Constitution.

Mr. President : I shall put article 258 to vote.

The question is:

“That for clause (1) or article 258, the following clause be substituted:—

- (1) Notwithstanding anything contained in this Chapter, the Government of India may, subject to the provisions of clause (2) of this article, enter into an agreement with the Government of a State for the time being specified in Part III of the First Schedule with the respect to—
 - (a) the levy and collection of any tax or duty leviable by the Government of India in such State and for the distribution of the proceeds thereof otherwise than in accordance with the provisions of this Chapter;
 - (b) the grant of any financial assistance by the Government of India to such State in consequence of the loss of any revenue which that State used to derive from any tax or duty leviable under this Constitution by the Government of India or from any other sources;
 - (c) The contribution by such State in respect of any payment made by the Government of India under clause (1) of article 267-A of this Constitution,

and, when an agreement is so entered into, the provisions of this Chapter shall in relation to such State have effect subject to the terms of such agreement”.

The motion was adopted.

Mr. President : I shall put article 267-A.

The question is:

“That in Chapter I of Part IX, after article 267, the following new article shall be inserted, namely:—

- ‘267A. (1) Where under any covenant or agreement entered into by the Ruler of any Indian State before the commencement of this Constitution, the payment of any sums, free of tax, has been guaranteed or assured by the Government of the Dominion of India to any Ruler of such State as Privy Purse—
- | | |
|-----------------------------|--|
| Privy Purse sums of Rulers. | |
|-----------------------------|--|
- (a) such sums shall be charged on, and paid out of, the Consolidated Fund of India; and
 - (b) the sums so paid to any Ruler shall be exempt for all taxes on income.
- (2) Where the territories of any such Indian States as aforesaid are comprised within a State specified in Part I or Part III of the First Schedule there shall be charged on, and paid out of, the Consolidated Fund of that State such contribution, if any in respect of the payments made by the Government of India under clause (1) of this article and for such period as may, subject to any agreement entered into in that behalf under clause (1) of article 258 of this Constitution, be determined by order of the President.”

The motion was adopted.

Article 267-A was added to the Constitution.

Mr. President : I shall put article 270-A.

The question is:

“That after article 270, the following new article be inserted:—

‘270A. (1) As from the commencement of this Constitution—

Succession to property, assets
liabilities and obligations of
Indian States.

(a) all assets relating to any of the matters enumerated in the Union List vested immediately before such commencement in any Indian State corresponding to any State for the time being specified in Part III of the First Schedule shall be vested in the Government of India, and

(b) all liabilities relating to any of the said matters of the Government of any Indian State corresponding to any State for the time being specified in Part III of the First Schedule shall be the liabilities of the Government of India,

subject to any agreement entered into in that behalf by the Government of India with the Government of that State.

(2) As from the commencement of this Constitution the Government of each State for the time being specified in Part III of the First Schedule shall be the successor of the Government of the corresponding Indian State as regards all property, assets, liabilities and obligations other than the assets and liabilities referred to in clause (1) of this article.’”

The motion was adopted.

Article 270-A was added to the Constitution.

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

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

ARTICLE 3 (*reopened*)

Mr. President : We shall now take up those consequential amendments No. 226 etc.

The Honourable Dr. B. R. Ambedkar : I would ask Mr. T. T. Krishnamachari to move the amendments on my behalf.

Shri T. T. Krishnamachari : Mr. President, Sir, I think it has to be formally put to the House whether they would give permission to re-open all these articles covered by these amendments.

Mr. President : These are consequential amendments which arise out of the amendments which we have accepted today, but as these relate to articles which have already been passed, the sanction of the House is required for reopening those articles. Do I take it that the House gives leave to do so?

Honourable Members : Yes.

Shri T. T. Krishnamachari : Mr. President, Sir, I move the following consequential amendments to certain provisions of the Draft Constitution already agreed to by the Constituent Assembly, I move:

“That for clauses (a) and (b) of the proviso to article 3, the following be substituted:—

‘where the proposal contained in the Bill affects the boundaries of any State or States for the time being specified in Part I or Part III of the First Schedule, or the name or names of any such State or States, 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.’”

Amendment No. 227.

Mr. President : Shall we not take them one by one? There are three amendments to it.

(Amendment No. 253 was not moved)

Shri H. R. Guruv Reddy : In view of the statement already made by the Honourable Sardar Patel, I do not move amendment No. 290.

Mr. President : Mr. Pataskar amendment No. 291.

Shri H. V. Pataskar (Bombay: General): Sir, I would like to make it clear in the beginning that the amendment which I propose to move does not relate exactly to the matter which has been just now proposed to be introduced by the amendment just now moved. It is with respect to the whole article as it has been re-opened. I hope, as the article has been re-opened, this amendment may be taken to be in order.

The Honourable Shri K. Santhanam : On a point of order, Sir, I think this is inconsistent with the provisions which we have made. A law will be passed by a majority of the House. There is no procedure for taking the votes of a small section of the House. This amendment is out of order.

Shri H. V. Pataskar : I do not admit it is out of order on that ground, because it is open to us to make a provision of the nature which I propose to make. The only point which struck me was that it is certainly beyond the scope of the official amendment which has been introduced just now. It will be open to the House to amend the provision in the Article as it has been re-opened. It cannot be said to be out of order on that ground. As the whole article is re-opened, I would be entitled to put forward my amendment.

The Honourable Shri K. Santhanam : Some States may be clubbed together for representation in the House of the People. We may not be able to identify which member is representing which State. It would not be possible to operate this clause even if it is passed.

Shri H. V. Pataskar : That I would explain while moving my amendment, and give my reasons for it. I have made a provision that the subject matter of the Bill shall be decided by a majority of the votes of the persons representing those areas in the House of the People that are affected by the provision of the Bill. There is no objection on that ground.

Mr. President : Would, it not be a very novel thing?

Shri H. V. Pataskar : Novel it would be.

Mr. President : Any kind of provision we can make in the Constitution to say that a particular question will be decided

Shri H. V. Pataskar : I would like to make my submissions before I move my amendment. I think that is necessary.

Mr. President : You will state your case.

Shri H. V. Pataskar : So far as the amendment of the honourable Member just introduced is concerned, it is good so far as it goes. As article 3 originally stood, it was to be with the consent of the States in Part III of the First Schedule. That is omitted. We had made provision in article 3 that no Bill was to be introduced in either House of Parliament except on the recommendation of the President and unless previously thereto the President has ascertained the views of the legislatures of the States in Part I, and obtained the consent of the States in Part III if any of those States were to be affected. Now by the proposed official amendment we dispense with the consent of States in Part III and bring them on a level with States in Part I and in both cases only the views of these States are to be ascertained by the President. Now, Sir, this is good as far as it goes. But, my fear is that so far as the actual wording of the article and its object being successfully carried out is concerned, it is likely to be a dead letter more or less in the Constitution. That is the view that I take. It is for this reason that I have proposed this amendment.

If we look to the history of a provision of this nature, you will first turn to the Government of India Act of 1919. There, for the first time, even a foreign Government realised that it was necessary to make certain adjustments in the boundaries of the Provinces and to regrant them and therefore a similar provision was made in the Act of 1919 for the purpose. Even then it was found that no action was taken between 1919 and 1935 for the simple reason that all these readjustments require some sort of interference with the day-to-day administration of Government which no Government of the day likes. Therefore, though there was this provision from 1919 to 1935 and there were not as many difficulties in the way of re-grouping as there would be now, and hereafter still more, they did not take any action because naturally the administration for the time being was engrossed with the day-to-day administration and they did not want to take this additional burden. Because, even if in a district some places were to be transferred from one district to another, there is always an amount of commotion and nobody

[Shri H. V. Pataskar]

in charge of the administration wants that there should be even this little interference with the day-to-day administration. It was for this reason that though there was such a provision in the Act of 1919, nothing was done.

Then came the Act of 1935. Probably realising that the same difficulties will arise even if a provision of this nature is merely made in the constitution when they wanted to remove the anomalies of Sind being linked with Bombay and Orissa being linked with Bihar, they naturally introduced two sections for the purpose in the Government of India Act 1935, and made provision for their being framed prior to the introduction of the Government of India Act of 1935. This is clear enough to my mind, that even hereafter merely by making a provision of this nature, nothing is going to happen. The present section lays down that Parliament may by law make such a change. It is only a minor portion of the whole country which is going to be affected by taking action as is contemplated in paragraph (1) of article 3. The rest will be represented by the majority of the representatives who are not likely to be interested in the matter. Therefore, unless the Government of the day, in spite of the fact that it would increase the problems of day-to-day administration, think it necessary that this should be done, this article would be a dead letter and no action will ever be taken. Because only after crossing the hurdles mentioned in article 3 namely, ascertaining the views of the States concerned etc., and getting the permission of the President, the Bill has to be introduced in the Parliament and even then there will be difficulties. Suppose there is a question regarding a small area in the south with respect to which the boundaries are to be changed. The members representing other areas are not likely to be keen about this, and if the government of the day is not interested in doing this, I am sure that the majority of members will be more inclined to go with the Government and say nothing should be done at present and no action is necessary and the Bill will not be passed. The article therefore will continue to be a dead letter hereafter, as it has continued ever since 1919.

I therefore propose this amendment. I do not want that it should be decided only by a particular group. Suppose one province is to be separated from another or one area is to be taken out from one province and added to another. I want the matter to be decided not with the votes of persons representing one of them but with the votes of all persons who are going to be affected by the change. I insist that the matter should be decided with the votes of all of them. If you leave to votes of all the members of the House who are not affected by the changes and leave the article as wide as it stands now, I am sure that this article 3 will be a dead letter for all time to come, and no action will ever be taken under this provision which is similar to the provision contained in the old Act of 1919 and in the Act of 1935. If I may say so, there will be more difficulties under the new Constitution and the provisions of article 3.

Mr. President : Well, Mr. Pataskar, it is conceivable that a case may arise where the members representing the State or States affected by the proposed law or opposed to the change, but the rest of the House wants it to be passed.

Shri H. V. Pataskar : That is not likely.

Mr. President : Likely or unlikely, I am putting it to you as a hypothetical question. Suppose a case arises, would you like the few members representing that particular State to defeat the rest of the House?

Shri H. V. Pataskar : In the very nature of things it is unlikely. What I expect is that the others are not likely to be much interested. Supposing they are interested, the matter should better be left to those who are concerned with the matter. Only the other day I learnt from the honourable Member Mr. Chaliha that there is a place called Dimapur in Assam and its inclusion in a particular area has started controversy; even for that there is such a terrible sort of agitation. Under such circumstances no administration is likely to make any change. So the hypothetical contingency is not likely to arise. In the next place even if such a contingency arises, it would be better that the matter should be decided with the votes of those that are going to be affected rather than otherwise.

Mr. President : The contingency is not very remote. Supposing that a proposal is that a certain portion be transferred to another and there is no question of creating separate linguistic provinces—that possibility is not remote. It is a possibility that should be considered.

Shri H. V. Pataskar : According to my amendment that should be decided by votes of both the States. However that is the object of my amendment and therefore I hope it is not out of order. Therefore my amendment is:

“That in amendment No. 226 of List VII (Second Week), after the proposed words in the proviso to article 3 the following Explanation be added :—

‘Explanation.—Any such law shall be deemed to have been passed if a majority of the members of the House of the People representing the State or States affected by the provision of such a Bill support the same.’”

Honourable Mr. Santhanam raised the difficulty of ascertaining the representatives whose votes are to decide the matter. My submission is there will be no difficulty as I have confined this matter to the votes of the members in the House of the People alone and not to Parliament generally or to the votes of the Upper House.

Mr. President : I think I will rule this out of order for various reasons. The first is that it is not germane to the amendment which has been moved and it does not fit in with that. The second reason is that the contingency that is contemplated raises very many questions and points which impinge upon many other articles of the Constitution which we have already passed. For example, the amendment wants that the vote of a majority of the Members of the House of Peoples representing the State or States affected by the provision of such a Bill shall prevail. In the first place, it takes away the right of the other House to consider that question. In the second place, the difficulty will be experienced when instead of voting for the law, the majority of members mentioned here are opposed to the law and the majority of the House wants the law to be opposed. So, for these various reasons I think this is out of order.

Then there is no other amendment to this. Anybody wishes to speak?

Shri Brajeshwar Prasad : Sir, I rise to oppose this amendment. We gave our permission to reopen this article on the understanding that these are consequential amendments. This is not a consequential amendment to any article which has been passed. We are reopening the whole question once again. The whole attempt seems to me to water down the power of the Parliament. It will make the article practically null and void.

Mr. President : I thought it was increasing the power of the Parliament.

Shri. Brajeshwar Prasad : If the Parliament is to function according to this article and if any such step is taken only after the views of the Legislatures of the State or of each of the States with respect to the proposal to introduce the Bill

[Shri Brajeshwar Prasad]

are received, the article will never come into operation, it would make it utterly impossible. It was on the definite understanding that this is a consequential amendment that we gave permission to reopen this.

Mr. President : In provision (b) as it stands which has been accepted, the consent is required. Here it is only the consultation that is required. Consent is much more than consultation. It enhances the power of the Parliament. It does not reduce it.

Shri Brajeshwar Prasad : I agree with this interpretation of this Constitution, but I feel that we should not sail under false colours. Why should we say that we are reopening this because this is a consequential amendment?

Shri T. T. Krishnamachari : This is substantially the same as provision (a) in the original article.

Shri Brajeshwar Prasad : May be, but why did you say that this is a consequential amendment? The House gave the permission on the understanding that this is a consequential amendment.

Shri B. Das : Sir, the amendment moved by my Friend Mr. Pataskar and the objection made by my Friend Brajeshwar Prasad indicate that some of us are not satisfied with the old article 3 or the present draft article 3. It is not a new thing that my Friend Mr. Pataskar points out that it repeats the old Government of India Act provisions. Mr. Pataskar wanted that the areas affected which are to be transferred to another State should have their views preponderate over the view of the whole Assembly of that State. I had some experience in the establishment of the province of Orissa. We followed the old 1920 Government of India Act. We were then in Bihar and Orissa. The Bihar and Orissa Legislative Council unanimously passed that Orissa province should be separated. Then there was a similar resolution in the Assembly of Madras and the great leader of Bihar, Shri Sachchidananda Sinha moved a Resolution on the floor of the former Indian Legislative Assembly that Orissa should be made into a separate province. It is not the creation of a new State that agitates the feelings of the Members of this House or the public at large. It is the adjustment of boundaries that is the issue and that crops up here and there, whether it be Bengal and Bihar or Maharashtra and Gujarat or Andhra and Orissa. It always crops up. The leaders make responsible or irresponsible statements and the public at large get agitated. For my self, I am not very happy with this new article 3 or with Schedule-I that is coming, whereby two of my ancient Orissa States, namely Sareikella and Kharsuan once merged with Orissa and then re-merged into Bihar. We feel those Oriya people will lose their race identity. The whole of Midnapore, three-fourths of which are Oriyas, does not have an Oriya school. Now the people there pass off as Bengalees. Bengalees have raised similar trouble in Purulia District. These are problems and I am touching on the psychological aspect of those fears and apprehensions. Whatever our Drafting Committee legislates or lays down is not the issue. The hearts of the people speaking different languages, or having ancient ties with one another, are seriously affected and touched in this matter. I am not very happy at my Friend Prof. Ranga laying claim almost to the area in which my village stands. So, Sir, these responsible or irresponsible utterances of responsible leaders or irresponsible political agitators create such state of things, and I do not very much appreciate article 3 which does not give any chance to any people to be amalgamated with their own race by adjustment of boundaries. It will not give my friend Mr. Chaliha any chance to readjust certain boundaries. It will not give anybody any chance. I am only voicing the psychological fear, knowing the conditions, that many of us live in; but we do not know how to rectify it by the provisions of article 3.

Shri Kuladhar Chaliha (Assam : General) : Mr. President, Sir, I am neither satisfied with the amendment, nor with the article enacted. In fact, if you know the history of the present position of the Eastern frontiers you would not pass an article like this. I should like the President to have absolute power to determine, to increase or decrease any State if he likes to do so. At present the Eastern boundary of Assam, for instance the Mac Mahon Line is quite nebulous. You do not know where the boundary is. You can push it further and further, and nobody knows where it will end. If the permission of Parliament is to be got and on its recommendation the President is to act, that will take a long time. He has to fix the boundary immediately. Now, we do not know where the boundary lies, either in the Eastern or Northern frontier. There was RIMA, which was said to be the last port of the British territory, but the Chinese took away the flag and a British column had to be sent to put the flag there again. That is said to be our boundary, but nobody knows if the boundary was ever fixed. Now, there should be some power or some provision which would empower the President to fix the boundary is. Now, there is the Balipara frontier and nobody knows where its boundary exactly is. Nobody knows the Naga boundary and where the Burmese territory begins. As such, the article as it is, and also the amendment suggested, I am not satisfied with. The President must have some power to fix the boundaries and if possible, the Drafting Committee should make the necessary provisions whereby the boundaries could be fixed wherever they are nebulous, where you do not know the boundary, where the Mac Mahon line ends, where General Hertz's fort or HERTZ line is, and so on.

Mr. President : I may point out that this article has nothing to do with boundaries of foreign States. It relates to boundaries within India. Why bring in the Chinese and all that?

Shri Kuladhar Chaliha : All right, Sir.

Mr. President : Mr. Brajeshwar Prasad, there is no question of sailing under false colours. The whole substance of the amendment adopted this morning is that the States should be brought in line with the Provinces. Here there is one point where the Indian States in Part-III are treated separately from the States in Part-I and the amendment is to put them all together. So it is really in pursuance of that, and not a case of sailing under false colours.

Shri Brajeshwar Prasad : I am sorry, Sir, I had not understood the implication.

Mr. President : Does anyone wish to say anything?

Shri T. T. Krishnamachari : Not after your explanation.

Mr. President : Then I put 226 to vote.

The question is:

“That for clauses (a) and (b) of the proviso to article 3, the following be substituted:—

‘where the proposal contained in the Bill affects the boundaries of any State or State for the time being specified in Part-I or Part-III of the First Schedule, or the name or names of any such State or States 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.’”

The amendment was adopted.

ARTICLE 47 (*reopened*)

Shri T. T. Krishnamachari : Sir, I move:

“That for the Explanation to clause (2) of article 47, the following Explanation be substituted :—

Explanation.—For the purposes of this clause, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice-President of the Union or the Governor or Rajpramukh or Uprajpramukh of any State or is a Minister either for the Union or for any State’.”

Sir, this is a purely consequential amendment and the words introduced here are the words ‘Rajpramukh’ and ‘Uprajpramukh’. I hope there will be no difficulty in passing this.

Shri K. Chengalaraya Reddy : I may point out that “Uprajpramukh” has not been defined yet.

Shri T. T. Krishnamachari : We have not yet tabled our definition of Rajpramukh yet. We will take the hint given by my friend and include the definition of Uprajpramukh.

Mr. President : Then I put it to vote.

The question is:

“That for the Explanation to clause (2) of article 47, the following Explanation be substituted:—

Explanation.—For the purposes of this clause, a person shall not be deemed, to hold any office of profit by reason only that he is the President or Vice-President of the Union or the Governor or Rajpramukh or Uprajpramukh of any State or is a Minister either for the Union or for any State’.”

The amendment was adopted.

ARTICLE 55 (*reopened*)

Shri T. T. Krishnamachari : Sir, I move:

“That for the Explanation to clause (4) of article 55, the following Explanation be substituted:—

Explanation.—For the purposes of this clause, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice-President of the Union or the Governor or Rajpramukh or Uprajpramukh of any State or is a Minister either for the Union or for any State’.”

Mr. President : Does anyone wish to say anything about it?

The Honourable Shri K. Santhanam : I think the word “President” may be left out, because you cannot expect the President to contest for the Vice Presidentship.

Mr. President : Mr. Krishnamachari?

Shri T. T. Krishnamachari : Sir, I do not know. We will examine the matter.

Shri A. Thanu Pillai (United State of Travancore & Cochin) : A President in office can stand for re-election and therefore the term ‘President’ should be in the article.

Shri T. T. Krishnamachari : Sir, we will examine it. It can be put to vote now.

Mr. President : The question is:

“That for the Explanation to clause (1) of article 55, the following Explanation be substituted :—

Explanation.—For the purposes of this clause, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice President of the Union or the Governor or Rajpramukh or Uprajpramukh of any State or is a Minister either for the Union or for any State’.”

The amendment was adopted.

ARTICLE 67 (*reopened*)

Shri T. T. Krishnamachari : Sir, I move:

“That clause (9) of article 67 be omitted.”

This clause (9) reads as follows:—

“When States for the time being specified in Part-III of the First Schedule are grouped together for the purpose of returning representatives to the Council of States, the entire group shall be deemed to be a single State for the purposes of this article.”

Sir, this will no longer be necessary and a contingency like this will be adequately provided for in article 3-B because I think there will be no necessity for providing for small States in the present state of the States, which are in Part-III. So clause (9) of article 67 may be omitted.

Mr. President : Does anyone wish to say anything about it?

The question is:

“That clause (9) of article 67 be omitted.”

The amendment was adopted.

ARTICLE 83 (*reopened*)

Shri T. T. Krishnamachari : Sir, I move:

“That for sub-clauses (a) and (b) of clause (2) of article 83, the following be substituted:—

‘he is a Minister either for the Union or for such State’.”

Actually these sub-clauses (a) and (b) are fairly lengthy and this amendment, it is considered would serve the purpose.

Mr. President : Does anyone wish to say anything about it?

The question is:

“That for sub-clauses (a) and (b) of clause (2) of article 83, the following be substituted:—

‘he is a Minister either for the Union or for such State’.”

The amendment was adopted.

Shri T. T. Krishnamachari : Sir, I move:

“That in paragraph (iii) of sub-clause (d) of clause (3) of article 92, for the words ‘exercises or immediately the words ‘exercises jurisdiction within any area included in the territory of India or which at any time’ be substituted.”

Sir, this refers to article 92 which incidentally deals with the subject of the annual financial statement and here it is a matter which deals with pensions payable to judges and this amendment is considered necessary in view of the present circumstances. Therefore, Sir, I move.

Mr. President : The question is:

“That in paragraph (iii) of sub-clauses (d) of clause (3) of article 92, for the words ‘exercises or immediately’ the words exercises jurisdiction within any area included in the territory of India or which at any time’ be substituted.”

The amendment was adopted.

ARTICLE 100 (*reopened*)

Shri T. T. Krishnamachari : Sir, I move.

“That clause (2) of article 100 be omitted.”

Sir, article 100 deals with restrictions on discussion in Parliament and this particular clause (2) reads thus:

“In this article the reference to a High Court shall be construed as including a reference to any court in a State for the time being specified in Part-III of the First Schedule which is a High Court for any of the purposes of Chapter IV of this Part.”

This is no longer necessary in view of the action taken by this House this morning. Sir, I move.

Mr. President : The question is:

“That clause (2) of article 100 be omitted.”

The amendment was adopted,

ARTICLE 248B (*reopened*)

Shri T. T. Krishnamachari : Sir, I move :

“That in clause (2) of article 248B, after the word ‘Governor’ the words ‘or Rajpramukh of the State’ be inserted.”

An explanation for this is hardly necessary.

Mr. President : The question is:

“That in clause (2) of article 248B, after the word ‘Governor’ the words ‘or Rajpramukh of the State’ be inserted.”

The amendment was adopted.

ARTICLE 263 (*reopened*)

Shri T. T. Krishnamachari : Sir, I move:

“That in clause (2) of article 263, after the word ‘Governor’ the words ‘or Rajpramukh’ be inserted.”

This clause deals with the custody of the Consolidated Fund of the States, and this change is necessary in view of the House having passed Part VI-A.

Mr. President : The question is:

“That in clause (2) of article 263, after the word ‘Governor’ the words ‘or Rajpramukh be inserted.”

The amendment was adopted.

SEVENTH SCHEDULE (*reopened*)

Shri T. T. Krishnamachari : Sir, I move:

“That in List I of the Seventh Schedule, after entry 43, the following entry be inserted:—

‘43 A. Courts of wards for the estates of Rulers of Indian States’.”

Sir, in the present set-up of the States, and in view of the fact that there are a number of Rulers, who are no longer Rulers in the real sense but have only estates, imposes a particular liability on the Central Government in regard to the administration of those estates, should that be necessary by virtue of the minority of those who own the estates or some incapacity for one reason or another of such persons, and the provision that is now being put in, is analogous to entry 25 of List II by which the provinces hitherto have been exercising jurisdiction over estates of zamindars and owners of other big estates where minority or other factors had supervened. The same provision is now sought to be put in with regard to the estates of Indian Rulers. This power has necessarily to be exercised by the Government of India and it cannot be entrusted for various reasons to the Governments of the States concerned.

Mr. President : The question is:

“That in List I of the Seventh Schedule, after entry 43, the following entry be inserted:—

43 A. Courts of Wards for the estates of Rulers of Indian States’.”

The amendment was adopted.

Shri T. T. Krishnamachari : Sir, I move :

“That in List II of the Seventh Schedule, to entry 25 the following words and figures be added:—

‘subject to the provisions of entry 43 A. of List I.’”

This is consequential as a result of the House accepting my previous amendment. This is necessary as it indicates precisely the powers of the States in regard to entry 25. Sir, I move.

Mr. President : The question is:

“That in List II of the Seventh Schedule, to entry 25 the following words and figures be add:—

‘subject to the provisions of entry 43 A. of List I.’”

The amendment was adopted.

ARTICLE 270 (*reopened*)

Shri T. T. Krishnamachari : Sir, there are two other articles. One is 270 for which, I hope, the permission of the House will be given to reopen that article., ‘There is another article of a non-controversial nature 67-A. I suggest that these two articles be taken up.

Mr. President : Let us take up 270 now.

Shri T. T. Krishnamachari : Sir, I move:

“That for article 270, the following article be substituted:—

270. (a) All property and assets vested in His Majesty for the purposes of the Government of the Dominion of India and all property and assets vested in His Majesty For the purposes of the Government of each Governor’s Province shall, as from the commencement of this Constitution, vest respectively in the Government of India and the Government of each corresponding State, and

Succession to property, assets, liabilities and obligations.

(b) all liabilities and obligations of the Government of the Dominion of India and of the Government of each Governor’s province shall, as from tile commencement of this Constitution, be the liabilities and obligations, respectively, of the Government of India and the Government of each corresponding State,

subject to any adjustment made or to be made by reason of the creation before the commencement of this Constitution of the Dominion of Pakistan or of the provinces of West Bengal, East Bengal, West Punjab and East Punjab.”

Mr. President : I think this is also an independent article which you wish to move.

Shri T. T. Krishnamachari : It forms part of the Chapter. I said that permission may be given for redrafting this also.

Mr. President : I had better ask for that permission. It is sought to amend article 270 which was adopted at a previous session of the Assembly. Do the Members give permission to amend that article”

Honourable Members : Yes.

Mr. President : It has been moved. You can proceed.

Shri T. T. Krishnamachari : The reason why this amendment is sought to be moved is merely because our legal advisers have told us that the article as it has been approved by the House originally is defective in character. Sir, the original article, if the House would permit me for purposes of clarification, reads thus:—

“As from the commencement of this Constitution the Government of India and the Government of each State for the time being specified in Part I of the First Schedule shall respectively be the successors of the Government of the Dominion of India and of the corresponding Governors’ Provinces, as regards all property, assets, liabilities and obligations subject to any adjustment made or to be made by reason of the creation before the commencement of this Constitution of the Dominion of Pakistan or of the Provinces of West Bengal, East Bengal, West Punjab and East Punjab.”

[Shri T. T. Krishnamachari]

The reason for the suggested change is this : The technical term that was used in the past was that all properties and assets were vested in His Majesty both in regard to properties that were administered by the Government of India and by the Governments of the provinces. But in respect of the liabilities and obligations of the Governments concerned the language used is slightly different. It has been found that so far as this position is concerned it must be clarified. I should like to tell Honourable Members of this House, who I know react rather adversely to any reference to His Majesty, that it is a matter in which we have no escape. If formerly the legal phraseology was that all assets and property of the Governments, whether of the Centre or of the Provinces, were vested in His Majesty, we have to use the same words in order to re-vest those properties and assets in the Government of India to be and the Governments of the States that are to be created by reason of this Constitution. Honourable Members will therefore understand that this is a matter in which our legal advisers have been categorical and we have no other option except to amend the article in the manner suggested by me. I hope the honourable Members of the House will find no difficulty in accepting the article as amended by me as it will make the position crystal clear and above any legal defect which it was stated the original article 270 did suffer from.

Mr. President : Does any Member wish to say anything on this? Then I will put this new article 270 to vote.

The question is:

“That for article 270, the following article be substituted:—

‘270 (a) All property and assets vested in His Majesty for the purposes of the Government of the Dominion of India and all property and assets vested in His Majesty for the purposes of the Government of each Governor’s Province shall, as from the commencement of this Constitution, vest respectively in the Government of India and the Government of each corresponding State, and

Succession to property, assets, liabilities and obligations.

(b) all liabilities and obligations of the Government of the Dominion of India and of the Government of each Governor’s Province shall, as from the commencement of this Constitution, be the liabilities and obligations, respectively, of the Government of India and the Government of each corresponding State,

subject to any adjustment made or to be made by reason of the creation before the commencement of this Constitution of the Dominion of Pakistan or of the Provinces of West Bengal, East Bengal, West Punjab and East Punjab’.”

The motion was adopted.

Article 270 was added to the Constitution.

NEW ARTICLE 67 A.

Shri T. T. Krishnamachari : May I move article 67 A, Sir,

Mr. President : Yes.

Shri T. T. Krishnamachari : I move:

“That after article 67, the following article be inserted:—

67A. Notwithstanding anything contained in clause (5) of article 67 of this Constitution, Parliament may by law provide for the representation in the House of the People of any State for the time being specified in Part II of the First Schedule or of any territories comprised within the territory of India but not included within any State on a basis or in a manner other than that provided in that clause’.”

Special representation to State in part II and territories other than States.

I would ask honourable Members to look at the wording of clause (5) of article 67, sub-clauses (b) and (c), which imposes certain limits within which representation could be given in respect of territorial constituencies from which Members of the House of the People are to be elected. There is, however, a clause in article 67 clause (7), which reads thus:—

“Parliament may by law, provide for the representation in the House of the People of territories other than States.”

Though it would not mean that while Parliament may by law provide for representation of these areas, it would certainly not mean that Parliament can depart from the scheme outlined in clause (5), sub-clauses (b) and (c).

The reason for proposing this amendment is that while Parliament might have to provide for representation in the House of the People of territories other than the States, it is also likely that in the case of Part II States some of them may not satisfy the conditions laid down by sub-clauses (b) and (c) of clause (5) of article 67. It may be argued that these areas coming under Part II of First Schedule could be grouped together for purposes of providing representation in the House of the People, but it may not be always possible. I have no desire to go into the details of the provocation for this amendment, but we do visualise that a contingency might occur where we might have to provide special representation for certain areas which might be either in Part II of First Schedule or be territories other than States, and the present set-up of article 67 would provide difficulties in the way of our providing these areas with representation in the House of the People. I therefore ask the House to accept—though it is a tall order—my word for it and accept the necessity for an amendment of this sort. I might anticipate some of the amendments that are sought to be moved, namely, that this concession should be extended to representation in the Council of States. I do not think that clause (4) which is the operative clause in article 67 bars entirely the liberty of Parliament in respect of provision of representation in the Council of States. I think that the matter is now being examined in the light of the set-up of Schedule 3 B which we propose to introduce in which the arithmetical proportions will be calculated and seats would be mentioned according to the various States as precisely as possible, that there will be some lee-way left therein for additional representation, should Parliament so decide. I therefore suggest to my honourable Friends in this House who want to bring in the Council of States to leave it at that. We are examining the position and if it is necessary we shall introduce a suitable amendment, but I do not think that it is necessary at this Stage. For that matter most of those areas, particularly those that are covered by Part II, have a greater desire to be adequately represented in the House of the People than in the Council of States, and I think that for the time being the contingencies which we envisage at the moment would be amply covered by a provision of the nature that I have now moved rather than any extension of this particular provision to the Council of States as well. I, therefore, request honourable Members not to press their amendments which seek to include the Council of States within the scope of the suggested article that is before the House.

Sir, I move.

Prof Shibban Lal Saksena : I beg to move:

“That in amendment No. 306 of List XIII (Second Week), in the proposed new article 67 A, after the words ‘House of the People’ the words ‘and the Council of States’ be inserted.”

Sir, the article as modified by my amendment would read thus:—

“Notwithstanding anything contained in clause (5) of article 67 of this Constitution, Parliament may by law provide for the representation in the House of the People and the Council of States

[Prof. Shibban Lal Saksena]

of any State for the time being specified in Part II of the First Schedule or of any territories comprised within the territory of India but not included within any State on a basis or in a manner other than that provided in that clause.”

Sir, my Friend Mr. Krishnamachari has explained the purpose of this clause. In fact the House will remember when we were dealing with the question of Delhi Province, the Honourable the Prime Minister suggested that Delhi might, if it does not have a separate Legislature, be given additional representation in the Houses of Parliament. I think that it is only proper, if that pledge is to be honoured, then representation has to be provided not only in the House of the People but also in the Upper House. Besides Delhi, there are so many other Centrally administered areas. We are taking in more and more of the States under Central administration. Chandranagore will soon come into the Union; similarly we have got Tipperah and the other States on the Eastern border of India which are likely to integrate with the Union. If the idea is to give representation to those areas in the House of the People, there is no reason why they should not be represented in the Council of States. I would have much appreciated and it would have been much simpler if we had provided for at least one seat for each of the Centrally Administered areas in the Upper House as well.

Shri Brajeshwar Prasad : Mr. President, Sir, I rise to support the article as has been moved by my honourable Friend Shri T. T. Krishnamachari. My honourable Friend Professor Shibban Lal Saksena has perhaps completely mis understood the meaning of representation in the Upper Chamber. Representation in the Upper Chamber is provided for a constituent unit—for those States which combine in order to form a federation. Here we are providing for representation for States in Part II which are not, technically speaking, constituent units. Constituent units are those States which are mentioned in Parts I and III of the Schedule. Article 67A provides for representations of those territories which have been placed in Part II territories like Andaman and Nicobar Islands, territories like Ajmer Merwara, Coorg and Panth Piploda. We cannot confer upon these territories the status of constituent units. Therefore there can be no meaning in providing representation for these territories in the Upper Chamber of the Federal Parliament.

The Honourable Shri K. Santhanam : Mr. President, Sir, this matter was considered at the time of the Constitution of the House of the People and the omission of Part II was deliberate. We did not want to create small pocket constituencies for the House of the People.

So far as the Council of the States is concerned, article 67(4) provides that 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. Therefore, while provision was made for the representation of States in Part II in the Council of States, they were left out in the representation in the House of the People for the reason that either they have got enough population or not. If they have got enough population, they will get representation on their rights. But where they have not enough population, it was intended that they should be grouped in the near-by constituencies. There is no difficulty in grouping Ajmer-Merwara or Coorg with the neighbouring constituencies so that those people also will take part in the election of the House of the People. Though, for the sake of convenience, each State in Part I and Part III may be taken roughly for demarcation in the constituencies of the House of the People, ‘there is no statutory obligation that every State should be dividend into exclusive territorial constituencies for the House of the People. There may be border areas of two States in Part I and Part III grouped together in the constituencies of the people.

Therefore, we are unnecessarily marring the Constitution by bringing in an article by which representation will be given to small areas, It is possible that in the course of integration or for other reasons, we may have to create a large number of Centrally Administered areas. Suppose in the reconstitution of the linguistic provinces many areas have to be left out as Centrally Administered areas, if we are to create a constituency for each of these areas, then we will be creating large number of pocket constituencies for the House of the people. So, I think it is a wholly unnecessary provision. The purpose can be achieved constitutionally by other means and I do not think representation in the House of the People which is based on a scientific basis should be marred by a provision like this. I do not say that will be misused, but in a Constitution the test is whether a provision can be misused, not whether it will be misused and this is a provision which can be misused. So, I suggest it may be dropped.

Shri T. T. Krishnamachari : Mr. President, Sir, I quite agree with Mr. Santhanam that article 67 was very carefully worded and it was intended at that time that there should be no mitigation of the conditions which are covered by clause 5, sub-clause (b) and (c). I did tell honourable Members of this House that we had a specific purpose in view in bringing this amendment and it would be very wise for me to go beyond telling them that the Drafting Committee and the Ministries concerned were fully satisfied that an amendment of this nature was necessary Therefore, I would ask my honourable Friend to withdraw his objection. At the same time I dare say that he is in a better position to realise than myself that since the initiative in any matter like this would ordinarily come from Government, it is unlikely that the wishes of this august House in regard to fixing representation in the House of the People would not be rigidly adhered to and that Parliament would agree to needless mitigation of the stringent conditions imposed by article 67. Beyond that I am not able to tell my honourable Friend of the purpose of this amendment. I could give him this assurance that this matter has been very carefully considered and it is after that that we have decided to bring this additional article. I do hope that the House will have no objection to accepting the motion moved by me.

Mr. President : The question is:

“That in amendment No. 306 of List XIII (Second Week), in the proposed new article 67A, after the word ‘House of the people’ the words land the Council of States’ be inserted.”

The amendment was negatived.

Mr. President : I shall now put article 67A. The question is:

“That after article 67, the following article be inserted :—

67A. Notwithstanding anything contained in clause (5) of article 67 of this Constitution, Parliament may	by law provide for the representation in the House of the People of any State
Special representation to States in Part II and territories other than States.	for the time being specified in Part II of the First Schedule or of any territories comprised within the territory of India but not included within any State on a basis or in a manner other than that provided in that clause.”

The motion was adopted.

Article 67-A was added to the Constitution

PROGRAMME *re* THIRD READING

Shri T. T. Krishnamachari : May I suggest that article 264A and, 296 and 299 be taken up tomorrow ?

Mr. President : Those are controversial matters and we may better take them up tomorrow.. We cannot take up any other article. So we shall rise now.

Mr. Naziruddin Ahmad (West Bengal : Muslim) : With regard to the amendments which have been passed today, I confess with many others that we have not been able to follow the debate at all. These amendments were sent to us at half past ten last night. I had to be awakened from my sleep. And from morning we are working here with the result we have had no time to consider these amendments. I do not object to the procedure because some short-cut must be arrived at. I am only suggesting that the Drafting Committee should again consider them, and if there are any further changes to be made consequent upon the discovery of any irregularities I think those amendments should again come up.

Mr. President : Which amendments are you referring to ?

Mr. Naziruddin Ahmad : The amendments which have been accepted. We have had no time to consider them.

Mr. President : But we have accepted so many amendments.

Mr. Naziruddin Ahmad : Yes. And I am suggesting that they may again be reconsidered by the Drafting Committee, and if there are further irregularities or inconsistencies they should be brought up at a later stage. We are being fed with amendments to satiety. It is impossible to proceed with them for anyone who would like to follow them and consider them.

Then with regard tomorrow's business we do not know what things are coming up. At nine or ten P.M. today we shall be given some new drafts and we will be expected to consider them tomorrow morning. I do not know what to do with such amendments. I therefore respectfully ask you, Sir, to consider this and give us some idea as to whether new drafts are coming on and, if so, what time we would be given to send amendments to the new Drafts.

Mr. President : So far as tomorrow is concerned, I think there are these three articles, namely articles 264A, 296 and 299, which have been before the House-two of them for a long time and the third one also for a little while. Tomorrow if there is anything fresh coming, that will come after these three articles.

Shri T. T. Krishnamachari May I mention that the Drafting Committee is engaged in going through the lacunae in the articles already passed and the consequential amendments that may have to be made, and it is likely that we might have to table some amendments tomorrow. My honourable Friend is so fully posted with all the details regarding the articles of the Constitution that he would not find it impossible to readjust himself and see that these amendments that we are likely to table tonight are necessary. They will be only consequential amendments. I would only offer my apology on behalf of the Drafting Committee for giving honourable Members such short notice, the only reason being that we are hard pressed for time and we would like this Union to close as early as possible.

Mr. President : Tomorrow we are going to take up these three articles first.

Shri T. T. Krishnamachari : And then other articles.

Mr. President : So far as I know, there are only one or two matters now which we have to consider. There is first the Preamble which has not been dealt with I am just mentioning the things which I have noted that have to be considered then we have Schedule I which defines the States, then these three articles which have just been mentioned. There is also another article, I understand, which

is going to be brought up—article 280A relating to financial emergency. And there is a third article which may come up relating to States, particularly relating to Kashmir article 306A. Then we have Schedule III-B which deals with the allocation of seats for the Council of States. Apart from these I think there may be consequently amendments. Are there any more?

Shri T. T. Krishnamachari : As I said before, there are some consequential amendments.

Mr. President : The others may be consequential which will arise out of amendments we have already accepted.

Shri R. K. Sidhwa : May I know whether Schedule I and the Preamble will be taken up in this session ? There was some complication about it. So I want to know whether Schedule I will be taken up before some formalities are observed.

Mr. President : They have to come up during this session because we have to complete the Second Reading. If necessary we can amend it—in the Third Reading, if there is any change in the Schedule.

Shri R. K. Sidhwa : Schedule I is very important and it may take one or two days, Therefore, unless the Drafting Committee is ready in pursuance of the Working Committee's resolution, there is no use our wasting time now and gain spending time at the time of the Third Reading.

Mr. President : But then we cannot complete the Second Reading without having all the articles and Schedules.

Shri H. V. Kamath (C. P. & Berar : General) : Why not meet for the First two days during the next session and complete the Second Reading, and after an interval of one day start the Third Reading?

Mr. President : I might just mention to honourable Members that we were considering the procedure to be followed at the time of the Third Reading, and some amendments to the rules will be coming up before the House on Saturday. It has been said that apart from merely verbal amendments and renumbering and replacements of articles, it may be discovered in the course of the examination which is going to take place of each article, that some changes are required, and we shall have to amend particular articles to that extent. If we hold up the second reading for that purpose, then there will be difficulty in having the Third Reading in the next session—and we must have the Third Reading then. Therefore we are suggesting that such amendments as are more or less of a consequential nature but which are not merely verbal may be taken up at the Third Reading stage and, under certain restricted conditions, amendments to these amendments. When these amendments have been disposed of, we proceed to a general discussion of the Constitution as a whole and we pass it at the Third Reading. So we are taking powers under the rules to deal with such consequential changes which may be found to be necessary. It may be that we do not find any consequential changes necessary. That would be a very happy state of affairs. But it is possible that we may and therefore we are taking precaution in that way.

Shri H. V. Kamath : Are Members of the House, as distinct from the Members of the Drafting Committee, at liberty to send amendments at the time of the Third Reading?

Mr. President : No.

Mr. Naziruddin Ahmad : Our rules provide for that. If the Drafting Committee has got such enormous powers to make changes

Mr. President : They cannot make any changes unless they are accepted by the House.

Mr. Naziruddin Ahmad : Some formal changes may be necessary. It is definitely provided in the rules.

Mr. President : I do not think it will be possible to open the door very wide. If there are any suggestions which honourable Members have to make and which really affect the substance of the provisions, I have no doubt that the Drafting Committee will give due thought to those things and that they will be considered.

Mr. Naziruddin Ahmad : I am only suggesting that the final draft of the Drafting Committee should be circulated to us well in time for a thorough consideration.

Mr. President : I was thinking of the time table also. I do not think it would be possible to get the constitution, as it is now passed- at the Second Reading, ready for the press before the 31st of this month. The whole thing has to be very carefully considered. Every article-every word-has to be scrutinised. It takes time. And so the Drafting Committee will not be in a position to get the thing ready, say, before the 31st of this month. Then it will take about a week to print. We shall try to circulate as soon as possible, say by the 4th or 5th but it would not be possible, earlier, we are trying to cut down the time as much as possible, but there are physical difficulties.

Shri H. V. Kamath : When do you propose to summon the next session Sir?

Mr. President : I propose to summon the Assembly from the 14th of November to 25th or 26th, because the session of the Legislative Assembly begins on the 28th November and that has already been summoned. So we have to finish this Third Reading before that and it is proposed to give two or three days for consideration of all such matters and consequential amendments that may be found necessary. I hope it will not be necessary to give two days but we are keeping even three days for that purpose and we shall have eight or nine days for general discussion. These eight days, I propose to devote to the general discussion and the last day will be taken up in the formality of actually passing the whole thing. It is suggested that the Constitution that is finally passed should be signed by every Member of this House,

Honourable Members : Yes, Sir.

Mr. President : That will be a historical document and it is desirable that every Member who has been associated with the making of this Constitution puts down his name on the copy which would be kept on record and that might take a day. So I am reserving one day for that Purpose and the remaining six or seven days will be available for general discussion.

Prof. Shibban Lal Saksena : What about the Constitution in Hindi ?

Mr. President : The Constituent Assembly has passed a provision that all Bills not only in the Centre but also in the provinces must be passed in the English language for the next fifteen years and so we shall pass this and you have already as Hindi is concerned, you have put upon me the responsibility of certifying to its correctness; and as regards the translations in other major languages, they will also be prepared. I am taking steps already to get these translations ready. Hindi I propose to publish before the Commencement of the constitution and the others also, but I am not so sure about the others.

Shri H. V. Kamath : Are we going to have a formal ceremony on the midnight of the 25th-26th of January ?

Mr. President : I have not thought of any formal ceremony at midnight or midday. But it has been suggested that we should all sign the copy of the Constitution. That is all that we have so far been thinking of.

Shri H. V. Kamath : January 26, I am thinking of that day, Sir.

Mr. President : We shall decide at the time when we meet next. There is one other matter which has not been discussed up to now, but I do not know, probably the Members may feel interested in that and that is the question of the National Anthem. The National Flag was adopted by the Constituent Assembly; it was not part of the Constitution but it was adopted by the Constituent Assembly. Similarly probably the National Anthem, also will have to be adopted by the Constitution Assembly, but by a Resolution; but we have not yet taken steps in that direction. The Government have already adopted a particular song as the National Anthem, but the Constituent Assembly has not yet accepted that. So we have not taken any steps in that direction yet I do not know what to do, but we may have to consider that point also.

Shri H. V. Kamath : We may take that up in the Third Reading in the next session.

Mr. President : I do not know if the House as a whole will be able to fix upon the National Anthem. If all of us joined in singing here it will not be an Anthem (six); it will be something very different; any way, that has to be done by some expert committee and I have not yet decided what to do about it, but if the House so desires, we may think of a Committee for that purpose.

An honourable Member : Compose a new National Anthem

Shri Suresh Chandra Majumdar (West Bengal : General) : Formerly it was agreed in one of the meetings of the Steering Committee that it would not form part of the Constitution but will be passed in the form of a Resolution just after the Third Reading.

Mr. President : This is what I said.

Shri Suresh Chandra Majumdar : Now you are thinking of referring it to a Committee or something like a committee for the purpose of selecting what will be the National Anthem, and this House will consider the report of that Committee and adopt any of the two songs as the National Anthem; and that would be during the life-time of the Constituent Assembly, I suppose?

Mr. President : During the Third Reading period, that is my idea.

Shri B. Das : Some of us do not like Jana Gana Mana. We would very much like that *Vande Mataram* should be the national song which has inspired us all for the last fifty or sixty years. In any case when the matter comes, we would like to express our views.

Mr. President : That is of course your opinion. I have said that I am thinking of having a Committee for the purpose of selecting the best song.

An honourable Member: Will the Committee propose a new song ?

Mr. President : The Committee will be free to compose even a new one.

Prof. Shibben Lal Saksena : Is the Committee to be appointed quickly:

Mr. President : It will have to be done now and as I said, I have not thought about it in concrete terms. Therefore, I am not in a position to make any announcement now.

The Honourable Shri K. Santhanam : Mr. President, Sir, my impression is that in other countries they generally do not adopt the National Anthem as part of the Constitution and they call upon expert musicians to create it and even offer prize. Now that we have a provisional National Anthem. I wonder whether it will be wise or expedient to come to a definite decision now. I think it would be well if we leave it to Parliament to enact by law after taking the necessary steps.

Mr. President : That is also one point of view. As I have said, I have not thought over the matter in concrete terms yet.

Shri Sita Ram S. Jajoo (Madhyabharat):- Will the Members from Vindhya Pradesh and Bhopal be present for, the Third Reading ?

Mr. President : I hope so and we are trying to get them ; and if they do not come, we cannot help it.

We shall adjourn,till tomorrow ten o'clock.

The Assembly then adjourned till Ten of the Clock on Friday, the 14th October 1949.

CONSTITUENT ASSEMBLY OF INDIA

Friday, the 14th October 1949

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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.

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DRAFT CONSTITUTION—(*Contd.*)

Article 296

Mr. President : We shall now take up article 296 ; amendment No. 15. We have got a large number of amendments. Some of the amendments are amendments to the amendment to be moved on behalf of the Drafting Committee. Some are amendments to other amendments which are to be moved by other Members. Many of them overlap. Therefore, I think Members will themselves exercise a certain amount of discretion in not insisting upon amendments which are only overlapping and which are covered by other amendments.

Shri H. V. Kamath (C.P. & Berar : General) : We shall abide by your ruling, Sir.

Mr. President : I do not want to give any ruling if I can help it.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Sir, I move:

“That with reference to amendment No. 3163 of the List of amendments for article 296 the following article be substituted:—

‘296. The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration consistently with the maintenance of efficiency of administration, Claims of Scheduled Castes and Scheduled Tribes to services and posts. in the making of appointments to services and posts in connection with the affairs of the union or of a State.’”

Sardar Bhopinder Singh Man (East Punjab : Sikh): On a point of order, Sir..

Mr. Naziruddin Ahmad (West Bengal : Muslim) : I had a point of order. I raised a point of order on this article. If you ask me

Mr. President : I shall hear both of you.

Sardar Bhopinder Singh Man : I submit, Mr. President, that unless a special resolution is moved, the present House is not competent to go back upon its own decisions. This very article has already been agreed to by this House.

Mr. President : This article 296?

Sardar Bhopinder Singh Man : The principle underlying this, the main principle on which this is based has been agreed to in very clear and emphatic terms. I shall make it clear. In the report submitted by the Honourable Sardar Patel as Chairman of the Advisory Committee on Minorities, Fundamental Rights, etc., presented to this House on 27th August 1947, clearly the minorities were defined on the one hand; and secondly, four points were discussed one by one distinctly, separately and quite clearly. The four points were : first, representation in the legislatures, joint versus separate electorate secondly, reservation of seats for the minorities in the Cabinet; third, reservation for the minorities in the public services; and fourth administrative machinery to ensure the protection of minority rights.

[Sardar Bhopinder Singh Man]

This report was submitted to the House and was later agreed to by this House. In this appendix, as adopted by the Constituent Assembly during the August 1947 session, it was agreed in regard to representation of minorities in the Cabinet as well as recruitment to the services—it is paragraph 9—it is said that due share will be given to the minorities in the all India services and provincial services and the claims of the minorities shall be kept in view in making appointments to these services, consistently with the efficiency of administration. Not only that. They make it further clear in emphatic and clear terms. They say, appropriate provision shall be embodied in the Constitution or a schedule thereto to this effect.

Having agreed to that, actually the Drafting Committee moved a special article 299 in which the rights of all the minorities were granted. Not only that. A later report was submitted to this House by the Advisory Committee on the subject of political safeguards to minorities on May 11, 1949. In this report the earlier decisions were reiterated and confirmed and not denied. Only in so far as the first item was concerned, that is safeguards in the legislatures were concerned, they were abrogated. So far as the other rights were concerned, they were allowed to remain intact. What had been conceded or passed by this House is now being taken away. I submit Sir, that this is a substantial change and unless a special resolution is brought in this House, this House cannot go back upon its earlier decisions.

Shri R. K. Sidhwa (C. P. & Berar : General) : Mr. President, Sir, I have not been able to follow the point of order raised by my honourable Friend, . . .

Mr. President : Will you please allow Mr. Naziruddin Ahmad also to state his point?

Mr. Naziruddin Ahmed : Mr. President, Sir, I raised this point of order some time ago when this clause was moved by Dr. Ambedkar. The point of order is this. I refer to the proceedings of this House dated 28th May last. It appears that there was a Minorities Advisory Committee which appointed a Special Sub-Committee to consider the question of the Minorities. I find that the members of the Special Sub-Committee were :

The Honourable Shri Jawaharlal Nehru,
The Honourable Dr. Rajendra Prasad,
Shri K. M. Munshi, and
The Honourable Dr. B. R. Ambedkar.

This Sub-Committee reported, amongst others, that there should be reservation of seats in the Legislatures for the minorities and also that so far as all-India and provincial services were concerned, there should be no reservation but the claims of all minorities shall be kept in view in making appointments to the services consistently with the considerations of efficiency and administration.

Now this was accepted by the House in its August Session 1947. This was later on partly reopened on the strength of a letter by Honourable Sardar Patel dated 11th May 1949 to reopen, not the consideration for the minorities about the services, but only the reservations in the Legislatures. I submit that Sardar Patel sent a report that the system of reservations for the minorities, other than Scheduled Castes, in the Legislatures be abolished. This Resolution was accepted by this House on the 26th May 1949 at the instance of Sardar Patel. That is also to the same effect. It is absolutely clear on a perusal of the original report, the letter of Sardar Patel, the Resolution moved by him and the speeches in the House—that they all attempted reconsideration only of the reservations for the minorities in the Legislatures. I may add that this was done with the fullest concurrence of the Muslim members of this

House. I was one of those who thought that the reservation in the Legislatures would not be good for the minorities themselves ; but with regard to the consideration of their cases in making appointments, subject to efficiency, that was not reopened. On the last occasion when I mentioned this, Dr. Ambedkar and a few others thought that I had completely misunderstood the situation. Mr. T. T. Krishnamachari went so far as to say (referring to me) that “if you cannot understand this thing in two days, you will never understand even in two months”. This is the elevated style in which I was addressed. But I submit and I assert again that, whoever may be mistaken. I am not mistaken as to what was then done.

I respectfully ask you, Sir, being one of the distinguished members of the Sub-Committee and being present in the House when this Resolution was accepted just to tell us whether this was one of the matters which was reopened Sardar Patel with his genius for constitutionalism said in paragraph 8 of his letter that the Committee are fully alive to the fact that “decisions once taken should not be changed lightly”. So a strong-minded man like him reopened the matter with considerable amount of caution and cogent reasoning. I therefore submit that with regard to the consideration of services and the appointment of Special Officer, they were embodied in articles 296 and 299.

Shri L. Krishnaswami Bharathi (Madras : General) : Is the honourable Member raising a point of order or making a speech?

Mr. President : He is raising a point of order and explaining it.

Mr. Naziruddin Ahmad : If it is not apparent to any Member, the point of order is this, that we have in accordance with the decisions of the Minorities Committee come to certain decisions. Those decisions were only partially modified at the instance of Sardar Patel. This modification did not in the least affect the paragraph relating to consideration in the services for the minorities. As the matter was partly reopened with so much formality, it follows that the rest remains without any amendment or change. I ask the House and specially you, Sir, to consider whether this matter can be so summarily reopened in this manner. The decision remains and I do not know how to get rid of that Resolution. That is my point of order.

Mr. President : We have to keep two things apart—the question of the point of order and the merits of the question. For the moment, I am concerned only with the point of order and the point that has been made by the two honourable Members comes to this. This House on a previous occasion took certain decisions which are sought to be reversed by the proposition which is now going to be moved. The only rule which deals with reopening of decisions is Rule No. 32 of our Rules, and that lays down that no question which has once been decided by the Assembly shall be reopened except with the consent of at least one-fourth of the Members present and voting. So the only restriction on reopening the decision which has once been taken is that at least one-fourth of the Members present and voting should vote in favour of reopening the decision. I think I had better put that question to the House and then if one-fourth of the members present and voting are in favour of reopening, the reopening will be perfectly in order.

As regards the merits of the case I do not think I should express any opinion at this stage or at any stage. It is for the House to decide. We are concerned at the moment only with the point of order, and my ruling is if one-fourth of the Members present and voting are in favour of reopening, the question can be reopened.

Shri R. K. Sidhwa : My Point was articles 299 and 296 were never passed in the House.

Mr. President : He is referring to previous decisions—not to 299 and 296. There was a previous decision once taken by the House on the Report of the Advisory Committee on Minorities.

Sardar Bhopinder Singh Man : Sir, I wanted your ruling on whether the present resolution means the reversal of the old decision.

Mr. President : If the House agrees to reverse the old decision, it will be a reversal; otherwise, the old decision will stand; but for the present I am concerned only with the question of whether we can take into consideration the question of reversing the old decision.

The Honourable Shri K. Santhanam (Madras: General) : Sir, the clause of a Bill is quite different from a Resolution.

Mr. President : You need not argue the point. I would like to know from the House what its opinion is. The question is

“Is the House in favour of reopening the question ?”

Honourable Members : Yes.

The motion was adopted.

Mr. President : So there is no bar to the reopening of the whole question. Now this can be discussed on its merits. Dr. Ambedkar has moved it and there are several Amendments to this proposition. I shall take them one by one. No. 16—Sardar Hukum Singh.

Sardar Hukum Singh (East Punjab : Sikh) : Mr. President Sir, I beg to move :

“That with reference to amendment No. 3163 of the List of amendments, (Vol. II), for article 296, the following be substituted :—

‘296. 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 services and posts in connection with the affairs of the Union or of a State for the time being specified in Parts I & III of the First Schedule.

Explanation.—Among others Muslims, Christians, Sikhs, Anglo-Indians and Parsees shall be recognized as minority communities.’

And then there is the alternative amendment as well, but I do not propose to move it. I leave it here.

Sir, as has already been pointed out, the original draft that was put before this House was different, and radically different I would say, from the one that is being proposed now. It read like this:

“296. 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 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.”

My object is very clear. What I want is to restore the original proposal that had already been accepted by this House. I cannot understand why the Drafting Committee has thought it fit to bring about this change. So far as that article stood in its original form, it was considered as a safeguard for the minorities, and I must say that it was only a solemn affirmation of bona fides, on behalf of the majority, and a mental satisfaction to the minority. Otherwise it had not very much value. That right was not justiciable in any court of law and it could not be enforced anywhere else as well. It had no binding force. But in spite of that, it is being taken away now. I must, at the same time, make myself clear that so far as I can think out, it was no blot on our secularism and it did not soil our nationalism as well. The minorities have always been advised to repose full confidence in the majority. Article 296

as originally framed, in my opinion, was that complete reposal of confidence by the minorities in the majority and nothing beyond that. The only thing that the members of the minority could do at any time, in cases of violation was that the attention of the majority could be drawn to the fact, that there was some pledge or an undertaking; and that is also being removed.

Sir, before I proceed further, I must make an appeal to the honourable Members on two points here. It is very unfortunate that the Sikhs for the present cannot persuade themselves to have implicit faith in the party in power. They have reasons for that, for they think that the past is a record of repudiated promises and broken pledges. Suppose, for the sake of argument, that I am wrong, that this is incorrect, and that the present leaders can be trusted to do justice to everybody; then is there any guarantee that the present leaders will continue for all time to come? Are there not indications, even now apparent, that men with different ideals and aims might come to power very soon? This House should take a detached view and not consider the fears of the minorities as necessarily a disparagement of the present party or of its leaders.

Then my second point is that the honourable Members should place themselves in the position of the minorities, and then try to appreciate those fears that they have expressed from time to time.

Sir, I might be accused of communalism when I sound this discordant note. But I hold that this nationalism is an argument for vested interests. Even the aggressiveness of the majority would pass off as nationalism, while the helplessness of the minority might be dubbed as communalism. It is very easy for the majority to preach nationalism to the minorities; but it is very difficult to act up to it. The original draft of articles 296 ad 299 was a result of the recommendations of the Minorities Committee, dated the 8th August 1947, as accepted by the Constituent Assembly on 27/28th August of that year, and there were four definite provisions, four definite clauses for those safeguards. The first was joint electorates with reservation of seats. This was embodied in 292. Then as regards Cabinet it was provided that there would be no reservation, but a Schedule would be provided as Instrument of instruction, that was schedule 4; and then the claims of minorities to be kept in view in appointments to services, that was section 296; and then a Commission for minorities, that was embodied in article 299.

As for the Sikhs, Sir, I must make a special mention, because I think they are very unfortunate in this respect. When the question of safeguards for minorities was decided in 1947, the question as regards the Sikhs was kept, pending as it was said that the result of the partition was not known very clearly then. I may say that before that date, the "Award" had been given. The Sikhs were leaving the West Punjab under circumstances which are well known to everybody here. They had willingly suffered themselves to be vivisected and they elected to remain with India. They were marching on foot, leaving behind everything that they loved. They were not coming alone. They had saved and brought seven districts to the Indian Dominion. The full significance of leaving open the question of Sikh minority on 28th August cannot fully be understood when we look at those events. If the Sikhs were not to be treated in some special way, where was the need for postponing the consideration of that question then? If the Sikhs were to be given reservation on population basis, just as any other minority had been given, what was to be awaited after August? What numbers migrated to India was not material at all. But it was considered that might be too great a blow at that time to bear for this unfortunate community. So the question was kept pending and the Sikhs thought that they would get special consideration on account of their sufferings.

[Sardar Hukum Singh]

Then came the next stage for the Minorities Sub-Committee to make a report and that is dated 23rd November 1948. That time was considered opportune for telling them that nothing special could be done for them, perhaps because more than a year had elapsed since that calamity came. But even then there was one satisfaction offered to the Sikhs. Though special safeguards were denied, pious platitudes were offered instead. The Sub-Committee observed:

“It seems scarcely necessary for us to say that in dealing with this problem we are acutely aware of the tragic sufferings which the Sikh community suffered both before and after the Partition of the Punjab. The holocaust in West Punjab has deprived them of many valuable lives and great material wealth. Moreover while in this respect the Hindus suffered equally with the Sikhs, the special tragedy of the Sikhs was that they had to abandon many places particularly sacred to their religion. But while we fully understand the emotional and physical strain to which they have been subjected, we are clear in our mind that the question remitted to us for consideration must be settled on different grounds.”

Then comes the third stage. The report is placed before the Minorities Committee and the resolution adopted is that the system of reservation for minorities other than Scheduled Castes in Legislatures be abolished.

I have to apologise to the members of the other minorities. They had their reservation. But, as soon as the Sikhs came in, they had to give up that as well. The Committee recommended that statutory reservation of seats should be abolished. I want to place more emphasis on that, because it is clearly the recommendation of the Sub-Committee as well as the resolution of Minorities Committee that the statutory reservation of seats in Legislatures should be abolished. There is nothing beyond it. This recommendation was accepted on 26th May 1949.

Now, the position was that there was reservation in legislatures under article 292. That has gone now. Article 292 stands amended in that sense.

Then there was the Fourth Schedule of Instrument of Instructions. That has also gone, as decided by us on 11th October. But the remaining two clauses embodied in articles 296 and 299 which we have just decided to reopen, reflect the decision of the Constituent Assembly. So far as I can see there is absolutely no reasons for that change that is intended to be brought about now.

The second point is that the Minorities Committee never recommended any change in these two articles. My third point is that the minorities themselves never agreed to give up these safeguards at any time. It was given out now and then that the safeguards would only be taken back if the minorities themselves thought and were convinced that it is to their own interests. But I submit here that so far as these two articles 296 and 299 are concerned the minorities themselves never agreed to give up these safeguards at any time. The Minorities Committee observed in their report that the Committee are fully alive to the fact that decisions once reached should not be changed lightly. Then I ask, why is this change being brought about so lightly and so casually? So my prayer is that these amendments that have now been brought forward by Dr. Ambedkar must be rejected and my amendment may be accepted and the original safeguards restored.

There is one very important factor that has gained currency during the last three or four days. It concerns the Sikhs alone. It has been given out that the Sikh representatives on the Minorities Committee gave an undertaking in writing that they would not put forward any further demands for any safeguard in the Constitution if,—that was a very big if—their backward classes the Mazhabis, Ramdasis, Kabirpanthis and Sikligars were recognised and calculated as Scheduled Castes. That may be true. In May last, as I have said, the position was that these two articles 296 and 299 had been accepted by the

Constituent Assembly. The reservation was there also, but they agreed on that date that they would give it up. The Instrument of Instructions is gone. So far as I have been able to ascertain from the proceedings of the Minorities Sub-Committee, I do not find any mention anywhere that 296 and 299 were referred to or that the minorities were asked to give up this as a whole. The Minorities Committee decided to abolish reservation only in the legislature. I must point out here that there is no reservation in articles 296 and 299. The Minorities Committee did not discuss anything else. Clauses (3) and (4) of the safeguards contained in articles 296 and 299 were never discussed. They had already been passed.

Now, Sir, I appeal to you to see how the representatives of the Sikhs know that they would be altered at the last moment? If I do desire to retain those decisions, I am not asking for any further safeguards for the Sikh community. I am only raising my voice against those safeguards being taken away from us, safeguards which had already been given. And, if any body is going back on the undertaking or on his word, then it is the Drafting Committee or the party in power and not the Sikhs.

Then there is another point that is also very relevant so far as this question is concerned. Supposing for the sake of argument we grant that the Sikh representatives agreed to forego every safeguard, is it to be understood that they did so because they were very keen to have their backward classes included in the Scheduled Castes? Is then their anxiety for that to be exploited and the opportunity utilised to get them to give up all other safeguards? I do not believe it. But suppose that was also true, I do realise this also that there was much opposition from the Scheduled Castes against such inclusion and Sardar Patel had to secure this to the Sikhs with great difficulty. The Sikhs are thankful to him. But what has happened to that concession secured at the sacrifice of all other demands, as is alleged? In the first places restriction was placed that this concession was confined to East Punjab only. It was not extended to the Patiala Union. How strange! Was there any justification for this discrimination on the basis of religion? If reservation was denied to religious minorities, and the Scheduled Castes were to get it for their backwardness then is there any jurisdiction to deny this concession to similar backward sections suffering from identical disabilities simply because they profess the Sikh religion? Would this be secularism? This much-coveted demand secured at such a heavy price and given so grudgingly and reservedly has become uncertain. Schedule X which was to enumerate the Scheduled Castes is deleted and article 300A empowers the President after consultation with the Governor or the Ruler to specify the or races to be Scheduled Castes. Sir, it will be realised that again the Sikhs shall have to strive and strive hard to persuade the Governor to advise the President to include these castes in the list of Scheduled Castes. My anxiety is that the Sikhs are left with nothing now. They have no further safeguards. What shall they offer to the Governor to advise the President to secure these safeguards? So, my submission is that even if there was any undertaking, that should be 'no consideration' because what was secured in lieu of that has already gone.

The Sikhs are told, when they remind the congress of their past pledges in 1929, 1946 and again in 1947 that circumstances have changed. The Sikhs were recognised as one of the three main communities in the Cabinet Mission Plan of which this Constituent Assembly is the creature. The only changed circumstances is that the Muslims have got Pakistan. Does it stand to reason that because the Muslims have secured Pakistan, therefore the Sikhs have ceased to be a minority? Is this a logical conclusion? I will be failing in my duty if I do not point out what our feelings are. Pakistan resorted to crude and positive violence to eliminate their minorities. We are using a subtle, indirect and peaceful way of resolving the same question. True to our traditions, we are of course non-violent. I appeal to the House to go slow. I

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request the majority to win the confidence of the minorities by positive actions and not by mere slogans. This change in article 296 has caused consternation in the minds of the minorities affected thereby. I request that the whole draft be allowed to remain as in my amendment.

It has also been given out that our leaders consider that our original draft of 296 would disfigure the whole Constitution. Sir, I fail to understand that. If the mention of Anglo-Indian and Scheduled Castes or Schedule Tribes does not disfigure this Constitution to any extent, the mention of Sikhs surely would not further disfigure it. But if in spite of my appeals, this House is not inclined to accept any amendments for restoring the old draft, then my last appeal is for the acceptance of another amendment, which is No. 256.

“That with reference to amendment No. 23 of List II (Second Week), the following clauses added to article 296 :—

- (2) Nothing in this article or in article 10 of the Constitution shall prevent the State from making any provision for the reservation of appointments or posts in favour of any minority community which, in the opinion of the State, is not adequately represented in the services under the State’.”

The Centre may be aware of every detail of everything occurring in the States; yet some liberty shall have to be left to the man on the spot. If for the smooth working of the administration and for creating cordial relations between the different communities, the State decides on some adjustment in the services, then there should be no bar under the Constitution. Some dignitaries think that there is no such bar at present, but my fears are that article 10 would be a bar for any option or adjustment—when it says that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to office under the State. I might have understood that it would not bar such an option if such clause (3) of article 10 had not specifically provided that:—

“Nothing in this article shall prevent the State from making any provision for 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.”

My amendment No. 256 runs on the same lines as this clause (3). Why I did not move it at the time that article 10 was being considered here is that because 296 was already there, there was no need then, but now because 296 is going to be altered, therefore I feel that this option must be left and it should be made clear that if a State wants to make any adjustments so far as the different communities are concerned, it will be free to make that.

I have seen certain reports in the Press that the East Punjab Government have been advised by the legal advisers of the Government of India that they cannot consider the claims of any section in the services, and that has increased my fears, and I am now convinced that unless we leave some option or choice to the States, it would not be possible for them to make any adjustment even if they wanted to do. I make my appeal to the House again. I am not asking for any reservations in this Constitution. I am not disfiguring it. I claim only for an indication of the goodwill of the majority. If that is also denied, it may prove the last straw on the camel’s back so far as the confidence of the minorities is concerned.

Mr. President : There are seven or eight amendments which purport to substitute their own proposals for this article. I would first take up those amendments which propose to make substitutions and then we can take up the other amendments. The next amendment which purports to substitute is No. 23 which stands in the name of Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : I do not propose to move it.

Mr. President : Then No. 24.

The Honourable Dr. B. R. Ambedkar : Not being moved.

Mr. President : Then No. 25 by Sardar Bhopinder Singh Man.

Sardar Bhopinder Singh Man : It is in relation to No. 23. Since 23 is not moved, I cannot move it.

Mr. President : It is practically the same with some slight change, allow it if you want to move it.

Sardar Bhopinder Singh Man : I am not moving it, Sir.

(Amendments Nos. 26 and 27 were not moved.)

Mr. President : No. 183 by Mr. Brajeshwar Prasad.

Shri R. K. Sidhwa : What about the other amendments?

Mr. President : I will take them up later on.

Shri Brajeshwar Prasad (Bihar : General): Sir, I move :

“That in amendment No. 15 (with your permission, sir, I want to say No. 15 in stead of No. 23) of List II (Second Week), for the proposed article 296, the following be substituted:—

- ‘296. (1) The maintenance of efficiency of administration shall be the only consideration in the making of appointment to services and posts in connection with the affairs of the Union or of a State.
- (2) Parliament may by law prescribe the conditions under which the President may, if he deems necessary appoint members of the Scheduled Tribes and Scheduled Castes to services and posts in connection with the affairs of the Union or of a State.
- (3) The provisions of clause (2) of this article shall apply in relation to such other Backward Classes as the President may on receipt of the report of a Commission appointed under clause (1) of article 301 of this Constitution by order specify as they apply in relation to members of the Scheduled Castes and the Scheduled Tribes.
- (4) Parliament shall have the power to repeal, extend or modify any or all of the provisions of this article from time to time.’ ”

The Honourable Shri K. Santhanam : (2) and (3) are inconsistent with (1).

Shri Brajeshwar Prasad : No. Let me explain how it is not inconsistent. If it is inconsistent, the Chair will give its ruling.

Mr. President : He has raised the point. I have to consider it.

Shri Brajeshwar Prasad : Let me first explain. If he has raised a point of Order, I will explain whether it is consistent or not. Clause (1) says that there shall be only one consideration before the Public Service Commission, namely, the efficiency of administration and the merit of the individual candidate. The Public Service Commission shall not take into consideration the claims of the minority communities. The Public Service Commission shall not be swayed by any other consideration at the time of making appointments. As a matter of political expediency, I have vested powers into the hands of the President and the President alone to appoints persons of the Scheduled Tribes and the Scheduled Castes. The Public Service Commission must be free from political entanglements. I do not know how (2) and (3) are inconsistent with (1). I await your ruling before I proceed with my speech.

Mr. President : The way in which it has been put is making it inconsistent. You can make it consistent by putting in the word “provided”.

Shri Brajeshwar Prasad : Or course, I am not a draftsman, Sir, nor am I an able lawyer like Mr. Santhanam.

Mr. President : However, I would not overrule your amendment.

Shri Brajeshwar Prasad : As far as clause (4) is concerned, the purpose is to make the whole article very flexible, so that with the growth of education and with the economic improvement in the standard of living, Parliament shall have the power to do away with this article at any time it likes. I am opposed to amendment No. 15 as it has been moved by the Drafting Committee, because I do not want that any other extraneous considerations should be brought in at the time of making appointments. I am afraid that if the claims of all these communities are taken into consideration, the whole fabric of the State will be jeopardized.

I am quite clear in my own mind that there are no minorities in this country, therefore the claims of no minorities can be taken into consideration. There are backward communities. There are people who have been suppressed and oppressed for centuries. It is their claims and their claims alone that, shall be taken into consideration. The burden of making such appointments must fall upon the shoulders of the President and the President alone, I feel that if we introduce, 'the provision that the claims of the communities like, tribals and Scheduled Castes should be taken into consideration, we shall be burdening the shoulders of the members of the Public Service Commission with a task for which they are not equal. What are the claims of the minority communities? What are the claims of the Scheduled Castes and Scheduled Tribes? Can any man endowed with ordinary intelligence and common sense reconcile the irreconcilable claims of these communities? The claim has been made that we demand parity. Another section demands that we should have representation in the services in proportion to our population. A third demand has also been made on the floor of this House that because we have been suppressed and oppressed for centuries, therefore the members of the Caste Hindu community must be made to make penance. If we are going to make penance for the sins that we have done against these people, then we shall have to hand over the entire machinery of the State into the hands of the Tribals and the Scheduled Castes. Are these claims going to be considered by the Public Service Commission ? I think that it is wrong to blame any community for a historical wrong History alone is responsible for all the wrongs that have been inflicted upon the Scheduled Castes and the Tribals. It is the Age—the Time spirit which alone can be held responsible.

Shri H. V. Kamath : Who makes history?

Shri Brajeshwar Prasad : Let me explain. History is made by the wrongdoer and the oppressed. It was wrong on the part of the wronged to submit to oppression. If objection is raised that they were not in a position to organise, we also will say that it was due to lack of political consciousness, due to lack of social sense that these things were perpetrated. It was the institution, it was society itself that was responsible. It was the time spirit and the time spirit alone that was responsible for the wrong done to the Scheduled Castes and the Tribals. The Caste Hindus are not responsible for any wrong. We have also suffered, because Caste Hindus have also been exploited by people living in this country and wrong have been committed and perpetrated upon us. For centuries, India was under foreign subjection. It, was subject to foreign intervention and foreign oppressions from times immemorial, The Caste Hindus have never flourished. It is wrongs, it is atrocious to throw all blame and responsibility on the Caste Hindus, they have been victims of circumstances. I cannot accept the proposition that the Caste Hindus have perpetrated any wrong on anybody.

I would like also to emphasise that this article ought to have been placed in the Directive Principles of the State Policy. It is merely a pious declaration. If it is merely a pious declaration, it should have been placed in the Chapter relating to Directive Principles of the State Policy.

I think there is another reason why I oppose this article. It is that we have done the utmost that we could do for raising the economic, moral and the material condition of these people. We have passed the Chapter relating to Fundamental Rights. We have passed article 110. We have made provision for reservation of seats in the Central and Provincial legislatures. We have laid down provision for adult franchise. We have made the basis of a secular State. What more do you want? Do you want to disintegrate the State?

I am quite clear in my own mind that if we do not take a bold stand at this moment and clearly lay down the principle that the basis of a secular State shall not be allowed to be corrupted by any other consideration, the future of this country is dark. I hold the opinion that those persons who are clamouring for these seats, for reservation, for consideration, represent a handful of people, constituting the cream of the Harijan society. They constitute the politically powerful group among the Tribals and the Scheduled Castes. I do not think that these claims and demands touch the broad classes of people within the Scheduled Castes and Tribals. Job-hunting does not affect the problems that confront us as far as the question of Scheduled Castes and Tribes is concerned. It is by as simulating ourselves and by integrating all the communities in one nation that there can be any peace and progress in this country. I do not want that the politics of the Muslim League should be re-enacted again on the political arena. The whole purpose of my amendment is to strengthen the foundations of the State. It has been the central theme of the speeches that have delivered here in this Assembly. I have moved my amendment so that the interests of the State may be protected.

(Amendments Nos. 280 and 309 were not moved.)

Mr. President : These are the amendments which seek to substitute the proposition moved by Dr. Ambedkar. I would like to dispose of these amendments first. One will be accepted and I will take the amendments on that and leave the rest out. As a matter of fact, only two have been moved—amendments Nos. 16 and 183. I will take Sardar Hukum Singh's amendment 256 separately.

Shri Krishna Chandra Sharma (United Provinces: General): Will there be any general discussion on the clauses ?

Mr. President : I will have it, but I am clearing the ground for the amendment so that we may not get confused. There are a large number of amendment as a substitution to this article. I will put Sardar Hukam Singh's amendment No. 16 first to the House.

The question is:

“That with reference to amendment No. 3163 of the List of Amendments, (Volume II), for article 296, the following be substituted :—

‘296. 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 services and posts in connection with the affairs of the Union or of the State for the time being specified in Part I & III of the First Schedule.’

Explanation.—Among other Muslims, Christians, Sikhs, Anglo-Indians and Parsees shall be recognised as minority communities.”

The amendment was negatived.

Mr. President : The question is:

“That in amendment No. 23 of List II (Second Week), for the proposed article 296, the following be substituted:—

- ‘296. (1) The maintenance of efficiency of administration shall be the only consideration in the making of appointment to services and posts in connection with the affairs of the Union or of a State.
- (2) Parliament may by law prescribe the conditions under which the President may, if he deems necessary, appoint members of the Scheduled Tribes and the Scheduled Castes to services and posts in connection with the affairs of the Union or of a State.
- (3) The provisions of clause (2) of this article shall apply in relation to such other backward classes as the President may on receipt of the report of a Commission appointed under clause (1) of article 301 of this Constitution by order specify as they apply in relation to members of the Scheduled Castes and the Scheduled Tribes.
- (4) Parliament shall have the power to repeal, extend or modify any or all of the provisions of this article from time to time.”

The amendment was negatived.

Mr. President : We have now only amendment No. 15 and I will take the amendments to that amendment.

Shri Guptanath Singh : (Bihar : General): Sir, I move:

“That in amendment No. 15 above, in the proposed article 296, for the words ‘The claims of the members of the Scheduled Castes and the Scheduled Tribes’ the words ‘The claims of the members of the Scheduled Castes, the Scheduled Tribes and such other castes who are educationally and socially backward’ be substituted.”

Before making my observations on the amendment, I should like to make it clear at the very outset that I am dead against all sorts of mischievous methods of communalism, casteism and such other “isms”.

Shri R.K. Sidhwa : And yet you move an amendment for the backward classes?

Shri Guptanath Singh : Yes Mr. Sidhwa. But have patience. This communalism has proved to be a curse to the country. It has become a national nuisance. We have reaped the cruel consequences of this kind of thing. Still, we are going to continue such things. I want that this demon of distinction and differentiation between man and man should not be allowed to flourish further in free India. But the present structure of society is such that we have been forced and our leaders have been forced to accept the principle of protection and reservation. I know we have done it in no happy mood. We desire that these things should be abolished for ever. But some of the sections of Indian society—our Harijan friends, our Adibasi brethren—have been oppressed for centuries and they have been tyrannised for ages that is why they are demanding these reservations. That is well and good. They should get the reservations and as much reservation as may be possible to make them equal to other sections of society and bring them on the same level. Then and then alone these distinctions and differentiations between man and man can be demolished.

But there are other sections in the country, whose conditions are not better than the conditions of these friends, the Harijans and the Adibasis. In some parts of the country their conditions are worse than some of our Harijan and Adibasi Friends. I wish to bring to your notice that even among the Brahmins, who claim to belong to the highest rank of humanity, there are untouchables. You will be surprised to know that even among Brahmins there are untouchables and they are regarded inferior even to other non-Brahmins castes. What in the meaning of this? This is utter nonsense. Some men are regarded as

superior and some are regarded to be inferior! In human society such distinction and discriminations should not be maintained. But our society is maintaining them. It is a matter of misfortune for our society. Therefore, some of these friends demand reservation, protection, safeguards and securities.

I know, Sir, and you also know that protection and control are sources of corruption. I will cite you two instances. The Central Government were pleased to award some scholarships to persons belonging to the Scheduled Castes and Scheduled Tribes as well as to socially and educationally backward people, and among those backward people one caste is called 'Kisans'. You see, the general meaning of the word 'kisan' is farmer, and a farmer may be any man, whether he is a Brahmin or a Kayasth or somebody else. But this term has been used in the United Provinces in a restricted sense. A man belonging to a farming class and who is very backward is called a kisan. You will be surprised to know, Sir, that some of the students belonging to very advanced classes applied for scholarships on the ground that their forefathers were kisans and even today they are cultivators, and therefore they think they should. get the scholarships.

Similarly, once some Brahmins applied to the Harijan fund for scholarship claiming themselves to be Harijans. Thus controls and reservations beget corruption and should not be encouraged. But as society is bigoted we must reap the consequences. The present structure of our society begets or creates these things and a kind of distrust, doubt and fear has been created in the minds of the oppressed classes. They fear that they will not get their share in the administrative services and therefore they are demanding it. Though they have been assured their rights in the Fundamental Rights and in the general directive principles, they are still persisting in demanding reservation.

I want to bring to your notice how the words "educationally and socially backward" came into the Constitution. Article 10, sub-clause (3) reads:

"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 tile services under the State."

So though we have granted them every thing, there is still distrust in the minds of the people.

I want to cite an instance. In a neighbouring province of Bihar a very brilliant student personally known to me, who had passed M. Com. from the Benares Hindu University, applied for a post. He appeared before the Public Service Commission in his province recently perhaps the members of the Public Service Commission did not know that the wretched fellow belonged to a very backward class. He had stood first throughout his career. A month after his appointment a letter came from the government of that province informing him that his services had been terminated. He wrote to the Government and his department to know the case and suggesting that if he was guilty he should be prosecuted and tried Government refused to give any information regarding his case. This should be a matter of shame for the Government of that province.

Similarly during the British regime in our glorious Bihar one gentleman belonging to a very backward farming or cultivating class was rejected as a deputy collector. Simply because he belonged to a very backward community... (Interruption). Have patience and hear me Mr. Sidhwa. You had your chance to speak. You will be glad to know that this gentleman is the principal of a first class degree college in Bihar. The selection committee rejected him as a deputy collector but he is a brilliant scholar and efficient educational administrator.

I want to bring to your notice one more instance

Mr. President : Is it any use giving instances of this kind ? They must be occurring all over.

Shri Guptanath Singh : All right Sir, I would not give. I want Sir, that those classes who are the backbone of Indian society agricultural, pastoral or artisan classes—though they are not counted as Scheduled Castes or Tribes should be given some opportunities to serve in government services. You have already accepted the proposal to appoint a commission to study and investigate their conditions. If you insert words to the effect that those wretched people will be given some chance it would be better for the country. They will prove to be most honest and efficient national servants.

When I tabled this amendment one day it was accepted by the drafting committee some days after—Dr. Ambedkar was pleased to include my suggested words in his own amendment No. 23. He realised the lacuna and accepted my amendment substantially. After that Mr. Munshi also accepted the principle contained in my amendment. But I do not know why they kept mum today when you asked them to move their subsequent amendments. They are masters and they can do as they please. I would appeal to them to consider the appropriateness of these words. They should include these words also in this article.

I hope they will consider the points I have raised and prove to the agricultural and pastoral classes, whose condition is worse than that of the Harijans and Adibasis, that they are going to do something for them and assure them that they would get their opportunities to serve the country. I hope, the caravan of communalism will now be stopped, the cobra of casteism will be killed and immediate steps will be taken to make this glorious land of free India heaven for the humanity suffering from inequality for several centuries.

(Amendments Nos. 18 to 22, 28, 29, 30, 31 and 32 were not moved).

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

“That in amendment No. 23 above, in the proposed article 296, for the words ‘shall be taken into consideration, consistently with the maintenance of efficiency of administration,’ the words ‘shall, consistently with the maintenance of efficiency of administration, be taken into consideration’ be substituted.”

Sir, as you observed this is a purely formal amendment but I think that it is a more correct construction of the proposed sentence in the article and I would recommend it earnestly to the Drafting Committee for what it is worth. But, Sir, may I by your leave make some observations on the amendment moved today by Dr. Ambedkar ?

Mr. President : Yes.

Shri H. V. Kamath : Today, Sir, we have taken another step forward in the building of our common Indian nationhood. Over two years ago this Assembly resolved that so far as the legislatures of this country were concerned, the minority communities should have reservation so far as their seats in these bodies were concerned, but in view of the fact that great events, perhaps tragic in some respects but events fraught with destiny occurred soon thereafter. Sardar Vallabhabhai Patel, a little over two months ago moved in this House, and this House accepted his proposition, that so far as the Muslims and Sikhs were concerned, reservation in legislatures for them should go. That was a wise decision taking us one step forward in our march to nationhood. Today again we are taking another decision which marks another stride in our onward march, and that is that we propose to abolish reservation for the minority communities, the Muslims and Sikhs so far as reservation for them in the services of the State is concerned. The only exception that we made on that day, two months ago when Sardar Patel moved his proposition in the House

is again the only exception that we make today, that is, with regard to the Scheduled Castes and Tribes. Members and even friends outside may disputer the wisdom of this course, but practical politics and statesmanship is guided not always by absolute ideal considerations; our policy and our course are often guided by expediency and the exigencies of the prevailing situation. The situation today dictates to us this course.

My honourable Friend, Mr. Brajeshwar Prasad referred to the plight of the Scheduled Castes and Tribes and remarked in passing that history alone is responsible for the condition of the Harijans today, and that the Caste Hindus cannot be held responsible I for one do not propose to go into this intricate question as to who is responsible and who is not responsible. I do not want of apportion blame. After all if Mr. Brajeshwar Prasad says that history is responsible and later on said after examining further causes that the time spirit was responsible, I venture to suggest that the divine force or whatever supreme force operates in this universe was responsible; the clan vital or the evolutionary force as you may call it, is responsible for what is happening in the world. He said that Caste Hindus were oppressed by foreign exploiters, but we see that these foreign exploiters have been vanquished by another force and that force has been attacked by another third or fourth force. As some English cynic has said : "In this world there is one flea which is preyed upon by another bigger flea and that bigger flea is again preyed upon by a third flea". One is never quite sure about what is going on in this universe. Some grand process is unravelling itself and I do not propose to go into the vexed question of who oppressed whom and how it all came about.

I only wish to say this much, Sir, that with the passing of this article today the only class of people of this country who might be lightly, apprehensive will be as my honourable Friend Mr. Guptanath Singh observed, those who are called the backward class of citizens. I do not wish to say who is backward and who is not backward, who are pastoral classes and who are agricultural classes or which other class is backward, but we have used that very term in the Constitution—backward classes, socially and educationally backward classes. They perhaps will be somewhat apprehensive about their future, as to what their share will be as regards the services in the State, but I wish to dispel their misapprehension by referring to the Fundamental Rights in article 10 in Chapter 3 of the Constitution Clause (3) of article 10 provides :

"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."

This is not a more directive principle of state policy; this is in Chapter III, on Fundamental Rights. When this is guaranteed to them, no backward class of ,citizens need be apprehensive. If there is no representation for them in the services they can take the Government to task on that account. I think this would be an adequate safeguard for them so far as their share in the services is concerned. I hope that this article 10 guarantees that right to them, and so they need have no dispute or quarrel with the article before the House today.

Before I close. I only wish to express the hope that, before ten years have expired from the commencement of the Constitution, in this country of ours which has had an ancient history, this country of ours which is ancient, but ever young, there will be not merely no backward classes, socially and educationally backward classes left, but that all the classes will come up to a decent normal human level, and also that we shall do away with this stigma of any caste being scheduled. This was a creation of the British regime which happily has passed away. We have taken many strides forward in removing or doing away with the numerous evils that were associated with the British regime This is one of the few that still remain. I hope, Sir, that were

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long, this stigma too will disappear from our body politic, and we shall all stand before the world as one single Indian community.

(Amendments 184, 255 and 257 were not moved.)

Mr. President : There is no other amendment that I can see.

Shri R.K. Sidhwa : There is amendment No. 36.

Mr. President : That is for the deletion of clause (2). There is no clause (2) in this article at all.

Shri R.K. Sidhwa : Mr. Guptanath Singh has in his amendment referred to backward classes.

Mr. President : In the proposition which is now before the House, there is no clause (2). Therefore this does not arise. Amendment No. 24 has not been moved.

Shri R.K. Sidhwa : Amendment No. 24 has not been moved. But, Mr. Guptanath Singh has moved amendment No. 28.

Mr. President : This does not fit in with Mr. Guptanath's amendment.

Shri R.K. Sidhwa : I have only to change the number from 24 to 28.

Mr. President : Where is clause (2) here?

Shri R.K. Sidhwa : The Drafting Committee has abruptly this morning brought in a new amendment. I am glad that the clause (2) has been dropped. When an amendment has been brought in for bringing in the word 'backward classes', this should be allowed.

Mr. President : This amendment has been there from long before. If you want to speak on the article I shall give you an opportunity.

Shri R.K. Sidhwa : May I say a few words, Sir ?

Mr. President : Yes, I shall first see if there is any other amendment. I do not think there is any other amendment. The amendments and the original proposition are now open to discussion.

Shri R.K. Sidhwa : Sir, I am very glad that the Honourable Dr. Ambedkar has moved amendment No. 15 and the other amendments relating to backward classes have been dropped. My amendment, as just now stated, related to the deletion of the clause relating to backward classes.

Sir, I have been trying to understand what is the definition of backward classes. In article 301, we have stated that those who are socially and educationally backward would be known as backward classes. Today, in this country, 88 per cent. of the people are illiterate. They do not know even the A B C or the alphabet of their own mother tongue. Only 12 per cent. of the people are literate in this country. Socially also they are backward. Am I to understand that 88 per cent. of the people are backward ? Article 301, definitely states that those who are socially and educationally backward will come under that article. How can we then say that the whole country, 88 per cent. of the people are to be known as backward classes ? My honourable Friend, Mr. Guptanath Singh, went to the length of saying that the peasant belongs to the backward class. He mentioned the illustration of the Brahmin as backward class. I know of an illustration and I shall give it, This was all created for the purpose of getting position and power and nothing else. Some ten years ago, a person wanted to get into the services as a Subordinate judge. He belonged to Pushkar Brahmin community. He set up a theory that the Pushkar Brahmins belonged to the backward classes. He had merely

to take the signatures of 500 persons and present it to the chief Judge. The Judge was guided by the signatures and as there was no Pushkar Brahmin in the service as Judge, he appointed him.

I may also tell the House that thirty years ago, the Parsees were considered as a backward class by the Bombay Government. You know Sir, that we are a far advanced community. Thirty years ago, 80 per cent. of us were educated; today 99 per cent. are educated. Still, thirty years ago, the Bombay Government declared that the Parsees were a backward class. It is only those people, who want to get into the services that use their influence and class themselves as a backward class. This is what was happening in the British regime. Some people who wanted to get into the services used their influence and classified themselves as backward classes, whereas really the masses of the people who are really the backbone of the country, they are not given any representation in the services. (*Interruption*).

Shri Guptanath Singh : You talk much but do not know the masses; I know the minds of the masses.

Shri R.K. Sidhwa : I do not want to argue with you. What I was saying was that there has been injustice done to a small section of our own people. I know there has been favouritism going on and let me tell you favouritism will go on for ever unless a real Ram Rajya comes into being. Some sort of favouritism will prevail even in the best of Government. So far as the Scheduled Classes are concerned, I have never conceded that the Scheduled Castes are a community. I have considered them as a class of people whom really great injustice has been done in the past by the Hindu community. Therefore, we want to do something to see that they come up to standard of their own brethren. If they were to classify themselves into a separate community, I would oppose it. I do not consider them as separate. So far as the Scheduled Tribes are concerned, they are not untouchables. For instance, there are the Bhils; they are not untouchable. They are only backward. They have also been brought under Scheduled Tribes. These people require attention at the hands of the special officer that is to be appointed.

I do feel that our article 301 is a real stigma on our Constitution. I wish article 301 should go: I do not want backward classes at all to be mentioned in our Constitution. It is a slur upon our intelligence. For those who are educationally backward, we have provided in the Directive policy that within ten years every man, woman or child should be made literate. When educationally every person is advanced, who will call them backward? There will be no backward classes. Socially, they become advanced. If a man is educated, I have seen he improves his position in society and social affairs. Therefore, the fundamental thing is education and we have provided for that in the Directive Policy. I would have wished it to have come in the Fundamental Rights. Within ten years, there shall not be a single person who shall be illiterate. Of course, there are certain difficulties in the way. I am sure our present Government are going to see that every man is made literate within a period of ten years, and we shall be proud that every person can read in his own mother tongue.

I therefore, oppose the amendment proposed by Mr. Guptanath Singh. It has no meaning. It has meaning only when we want to favour some body and therefore we want to classify them as backward classes. The article as moved by Dr. Ambedkar is sufficient for our purposes. When a time limit is not mentioned, I am quite sure that within a short period these Scheduled Classes will go and they will come up to the level of the other people and we shall see that there is no mention of these Scheduled Classes in our Constitution hereafter. With these words, I strongly support the proposition

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and I oppose any kind of reservation or even the mention to reserve posts in services in the Constitution. We have done away with reservation in the legislatures. With what face shall we say that there should be reservation in the services ?

It looks so awkward. Our leader, Sardar Patel, made it very clear the other day when he brought the question of representation in the Legislatures, and today my Friend Sardar Hukam Singh has put in Parsees also that they want special rights. Sir, my community has never asked for special rights in any Legislature or in the services. They have come by merits and I can assure you whatever number they are in the Government of India—there are some Parsees in services of the Government of India—they have come by merit and not by favour. The majority community realise it and we leave it to them. We know they can appreciate it. Merit alone should count in our future Constitution and nothing else. I place great stress upon this. This method has been started by the British Government of favouring one community or the other. Sir, we have given our President the power to classify who are the backward classes. Mushroom association in the name of backward class will be formed and the President will be put in an awkward position, many communities will try to influence them. I am sorry that this clause is there but I only expect that article 301 will remain a dead article in this Constitution and shall never be operated upon. With these words I strongly support the original proposition and oppose all amendments.

The Honourable Sardar Vallabhbhai J. Patel (Bombay : General) : Sir I had no intention to speak on this article, but when I heard that a definite insinuation was made in this House that because the Congress Party has a majority in this House, therefore it does not care for the promises given to the Sikhs and they are breaking the promises given them I have to speak. I am very sorry to hear this charge from the Sikhs or a representative of the Sikhs. Sardar Hukam Singh made this point. At another place on another occasion I had made it clear to him and yet he seems to have raised the same question. Now I wish only to answer that charge for the other things I do not think I need go into discussion or say anything about it. But when it is alleged that Congress is breaking its promises given to the Sikhs, one after another, I wish to understand the position.

We are—he allege—breaking the promises—broke the promise given in 1929, one in 1946 and another in 1947. I do not know what promises he refers to. If he refers to 1929 and then again to the Partition of India and Pakistan, I wish to point out to him that there was not a single Sikh voice against the Partition; on the other hand they are probably in the forefront in demanding partition of the Punjab. After the butchery and the bloodshed that took place in Rawalpindi and Multan, the Sikhs were terribly upset and naturally distressed and they had considerable sympathy from the Congress. At that time there were other tragedies happening in other parts of the country and then came the conflagration in Lahore, Amritsar and other parts of the Punjab. It was at that time with the concurrence of the Sikhs,—unanimously, with one voice they agreed,—we agreed to the Partition of India. Now to turn round and charge us with a breach of faith is a charge which I cannot understand and it is not right for the Sikh community—a brave community like the Sikhs—to fling these charges at us. Who were we to agree to the Partition of India and partition of the Punjab if the Sikhs were opposed? We could never have done that. Because they also said that it was best in the interest of India that we should agree to partition on condition that the Punjab was partitioned—that we agreed to it. Now that is about 1929 promise.

Then again he says about 1946. If he refers to the Minorities Committee recommendations, I can understand it. I propose to explain it in detail as to what has taken place. But I do not know what he means by 1946 promise. If I can have any concrete expression of a promise given by Congress Leaders, I might, and if so I do not think there is any one Congressman who will go against that promise. I have not however understood the psychology of the Sikh leaders—some of them—who often charge everybody with breach of faith, and always complain of minorities being ill-treated.

Look at the army. Are they not very heavily over-weighted ? What have we done ? We are under their protection and we trust them and not a single army officer is disloyal to us. Why do you create this feeling for nothing? I What is it that you want ?

When the Minorities Committee in the Advisory Committee passed its first decisions, I was appointed Chairman and I took all the minorities with me and the decisions of the Minorities Committee and the Advisory Committee were almost unanimous. This House appreciated the work of these Committees and congratulated me on that. Time went on and the minorities themselves began to feel that we should reconsider our decision and, headed by the great patriotic Christian leader, they brought in a Resolution that they want to give up the reservations. And what reservations?—Not this Petty reservation of minorities in the services—but the big reservations in the Assemblies, both in the Centre and in the provinces.

They agreed to have joint electorates and to have nothing to do with this communal separatism. When they desired that, I called a meeting of the minorities Committee and the Advisory Committee. At their instance decisions were taken. The Sikh stand has always been that “if all minorities agreed, we are also agreeable. We do not want any special arrangement. We do not want any advantage. We are able to stand on our own legs”. That was their stand throughout, in the Congress and outside the Congress.

When this resolution was brought, and this question was about to be considered, the Sikh representatives of the Punjab came to me and they said that so far as the Scheduled Caste Sikhs are concerned, they should be treated separately and given the same advantage that was being given to the Hindu Scheduled Castes. The Scheduled Castes objected to a man that these are not Scheduled Castes, and if they are Scheduled Castes, then they are not Sikhs. Therefore, they said, “you cannot give them separate treatment. There are forcible conversions being made from the Scheduled Castes to the Sikhs for this purpose”. That was their grievance. On the other side, the Sikhs said that they had converted so many and it was not by force. “They have come to our fold”, they said, “and if you do not recognise these concessions, then they will all go back to the Scheduled Caste Hindus and we will lose”.

Now, it was against our conviction to recognise a separate Sikh caste as untouchables or Scheduled Castes, because untouchability is not recognised in the Sikh religion. A Scheduled Caste Sikh community has never been in the past recognised. But as the Sikhs began to make a grievance continuously against the Congress and against us, I persuaded the Scheduled Caste people with great difficulty to agree to this for the sake of peace. I persuaded the other members of the Advisory Committee on the condition, which is in writing by the representatives of the Sikhs, that they will raise no other question hereafter.

Then in the Advisory Committee, when this question came, Sardar Ujjal Singh raised the question, “What about the Services”? I said, “Your representatives have given in writing that no other question hereafter is to be raised”

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Giani Kartar Singh was also in the Advisory Committee, and he got up and said, "No, we will settle it in the Provinces. It is not to be raised here."

What is the use of charging the Congress with having broken promises ? Do not break the promises that you have given, and do not charge others with breach of promises. If you now say, as Sardar Hukam Singh says, that these people were anxious to serve an advantage for the Scheduled Caste Sikhs and they may have agreed to this, but it is a mistake, then if it is a mistake, reconsider your position, and I shall reconsider mine. Take away that concession and remove it, and you get your pound of flesh, if you want it.

What is it that you get in the Services? Even at present, what do the Sikhs do ? What do other communities do ? So far as the Services are concerned, for all major posts or all posts which go by competitive examinations there is no reservation on communal grounds. They go to the Public Service Commission. You are quarrelling or asking for the minor posts—Chaprasis and clerks. Is it the Sikh position now that we have not got enough Sikh Chaprasis and clerks ? Are you going to raise the community in that manner? If that is so, tell me, and if you leave what you have got for the Scheduled Castes, I shall persuade the Constituent Assembly to give you what you want, but you will repent afterwards.

You say, in PEPSU it is not the arrangement. But this is not the House to hear that complaint. If there is any such complaint, send it to us. We shall consider about it. But do not go behind, your pledged words and charge other people with breach of promises or pledges. We are not the people to break pledges. Every sympathy and every consideration will be shown to the Sikh community because it is located in a particular area; it is a small community, and yet it is brave, virile and it can stand on its own against anybody. Do not break that spirit by continuously saying, "We are injured, we are helpless, we are in a minority, we are hopeless, we cannot do anything."

That kind of psychology will injure the community itself and not others, and injuring the community means injuring the nation. It is not as a representative of the majority community that I give this advice, but as a well wisher of the Sikh community, I advise you not to create this atmosphere by saying continually, "we are badly treated, badly treated". If you do, then it is the Sikh community that will be hurt.

When the Advisory Committee took this decision to give up reservation, we clearly understood the position and all communities clearly understood it. When the decision of the Advisory Committee came before this House for its acceptance, I made it clear that this Constitution of India, of free India, of a secular State will not hereafter be disfigured by any provision on a communal basis. It was accepted with acclamation.

It is said that if you make any arrangements in the Provinces, then the provisions of the Constituent Assembly with regard to fundamental rights will come in the way. Let me tell you, nothing comes in the way where arrangements are made by mutual agreement, and without mental reservations. That provision in the fundamental rights is provided for an individual who is injured. But if you make domestic arrangements in the Punjab between community and community for the small posts, then who is going to question that ? But first create an atmosphere for adjustment of such things in your Province. It is the continued atmosphere of quarrel between two communities that has created distrust among them, and that creates difficulties. You will have our support and sympathy continuously in that Province because that Province has suffered most. It is injured and the wounds have not yet healed. It is for us all, and

for you particularly, to help us in healing the wounds. Therefore, let us make a united effort to raise the morale of that Province, the strength of that Province, which really is at the top of India, where the border is. Then you will have no complaint at all.

After all, what is the Sikh community backward in ? Is it backward in trade ? Is it backward in industry, or commerce or in anything ? Why do you consider yourselves to be backward ? Therefore, forget that psychology. If there is any injustice done, then come to us, we will see that no injustice is done.

Sardar Hukam Singh said, "We trust the present leaders. What about the future ?" I say, you must have the courage to trust the future and not the present leaders. What will happen when the present leaders are gone ? Will Sardar Hukam Singh be living here ? Why raise this issue ? We must trust that if the present leaders go, we will have better leaders in the future. If we have trust in the future of our country, we may trust that in the future our country will produce leaders who will make a name in the history of the world. We have shown it today. We will do it in the future. That is India. India produced a Mahatma in a State where slavery was rampant. He went to a country where people would not walk on the foot-path, where people could not travel even in the III class with safety, where we were all treated as untouchables even now we are treated as untouchables there. There he made a name and fame all over the world, and presented a new weapon to the world. Then he came here. Here he raised the Sikhs, the Muslims, the Hindus, Scheduled Castes, everybody. He gave us freedom. Do you think that we are going to raise the morale of our country or the reputation of our country or the fame of our country by breaking promises ? No. We have all agreed that we must trust each other.

I know that the atmosphere so far as the Muslims are concerned is not quite as happy as it should be. But there are reasons for that. The Congress is not responsible for this. If there had been no Partition, perhaps we would have been able to settle our differences. But there was Partition. This Partition by agreement brought about subsequent events. But, since Partition, whatever is being done on the other side is having a reaction here for which we have to struggle day and night.

You do not know the immense difficulties of a secular State being governed peacefully in such conditions. Now, the world is in such a condition that we cannot take any independent action of our own accord. Even though there is injustice done, we have to wait, pause, ponder and consider, because there is an Organisation known as the U.N.O., who day and night watch the situation all the world over and try to see how peace could be maintained. I do not wish to say anything about the work of the U.N.O., because I know nothing about it. But the other part of the country known as Pakistan misses no opportunity of defaming and blackmailing us all over the world, whether there is occasion for it or no occasion for it. So we have to be specially careful. They break promises and charge us with breach of faith and yet we cannot solve it without reference to the other countries or without any regard for its reaction in other countries.

Therefore we have to be very careful. Do not add to our difficulties by creating internal difficulties in which there will be disputes between the communities. Help us and it will be to your advantage and it will be to the advantage of the whole country. You will have no cause for regret if you drop the claims for minor provisions for small minorities in regard mainly to service questions. Fight over issues beneficial to the whole country. Let us do that. Let us prepare the ground for that. You have big interests involved in two

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provinces. Though the problems in Bengal are different, as in the Punjab they have also certain problems. These problems can be settled not by the Centre, but by the provinces themselves. So, for God's sake, those who are interested in the well-being of the country should create a different atmosphere and not an atmosphere of distrust and discord.

My only point in coming to reply here was to meet the charge that has been levelled against the Congress. I am sorry to hear it. Neither I nor any congressman has done anything here in the Centre to give cause to the Sikh Community to distrust us. We shall never give cause for that in spite of what you may do. Therefore for the last time in this Constituent Assembly, as responsible members of Parliament, I appeal to you. By all means ask for what you want or what you like. But do not blame other people for your own faults, I desire now to give you this undertaking that if you still feel that the advantage that was taken from us is not worth it you throw it away and, if you think this is better, I will give it to you. You consider the matter amongst yourselves, amongst the Sikh community and decide. But do not try to have it both ways. One section first comes and gets certain advantages and gives promises to a certain section of the community and thereafter another section comes and charges us with not having given it certain other advantages which it is anxious to have. That is not the way to do things. You may unite and decide what you want. It is not our fault if you have not done, so. After all, what is it that you want? You want an insignificant thing, but granting it would mean putting a blot on the Constitution. We agreed about certain things on that day and everybody was pleased with it. Therefore be satisfied with what you have done and there will be no cause for regret. (*Applause*).

Mr. President : Is it necessary to continue the discussion ?

Honourable Members : No, no.

Shri H. V. Pataskar (Bombay : General) : I move that the question be now put.

Sardar Hukum Singh : I want to submit to you most respectfully that I do not find anywhere in the Constitution anything that we have secured at so high a price.

Shri Mahavir Tyagi (United Provinces : General) : Sir, may I appeal to you that this general discussion on this important article has not been full. It is for you to see whether you should accept the closure motion or not.

Mr. President : I see that and I am prepared to accept it.

The Honourable Dr. B. R. Ambedkar : I have nothing to add to what has already been said.

Mr. President : I will now put amendment No. 17 of Shri Guptanath Singh to vote.

Shri Guptanath Singh : I beg leave to withdraw it. The amendment was, by leave of the Assembly, withdrawn.

Mr. President : Then we come to the amendment of Mr. Kamath.

Shri H. V. Kamath : Sir, I leave it to the good sense of the Drafting Committee.

Mr. President : It is a verbal amendment and it can be left to the Drafting Committee. Now I will put amendment No. 256 of Sardar Hukam Singh to vote.

The question is :

“That with reference to amendment No. 23 of List II (Second Week), the following clause be added to article 296 :—

- (2) Nothing in this article or in article 10 of the Constitution shall prevent the State from making any provision for the reservation of appointments or posts in favour of any minority community which, in the opinion of the State, is not adequately represented in the services under the State’.”

The amendment was negatived.

Mr. President : The question is :

“That with reference to amendment No. 3163 of the List of Amendments, for article 296 the following article be substituted :—

‘296. The Claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration in the making of appointments to services and posts in connection with the affairs of the Union or of a State’.”

The amendment was adopted.

Mr. President : The question is :

“That article 296, as amended, stand part of the Constitution.”

The motion was adopted.

Article 296, as amended, was added to the Constitution.

Article 299

Shri K. M. Munshi (Bombay : General) : Sir, I move—

“That with reference to amendment No. 63 above, for article 299, the following be substituted :—

‘299. (1) There shall be a Special Officer for the Scheduled Castes and the Scheduled Tribes to be appointed by the President.
Special Officer for Scheduled Castes Scheduled Tribes, etc.

- (2) It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under this Constitution and report to the President upon the working of those safeguards at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament.
- (3) In this article, the reference to the Scheduled Castes and Scheduled Tribes shall be construed as including the reference to such other backward classes as the President may on receipt of the report of a Commission appointed under clause (1) of article 301 of this Constitution by order specify and also to the Anglo-Indian community’.”

I need not say anything more on this amendment. The Special Officer is intended to look after the political safeguards that have already been given by other articles in the Constitution. I therefore, move the amendment.

Mr. President : I will first take up the amendments to this particular amendment which has been moved by Mr. Munshi.

(Amendment No. 78 was not moved.)

Shri R. K. Sidhwa : Sir, I move :

“That in amendment No. 64 above, in clause, (3) of the proposed article 299 the words ‘to such other backward classes. . . .’

[Shri R.K. Sidhwa]

Backward Classes have gone. Mr. Munshi has put it only the Scheduled Castes and Scheduled Tribes. If this is so, I do not want to move my amendment.

Mr. President : Clause (3) of Mr. Munshi's amendment says—

“In this article, the reference to the Scheduled Castes and Scheduled Tribes shall be construed as including the reference to such other backward classes as the President may on receipt of the report, etc.”

Shri R. K. Sidhwa : Then I move my amendment, Sir.

...“as the President may on receipt of the report of a Commission appointed under clause (1) of article 301 of this Constitution by order specify and” be deleted.

Sir, I do not want to speak at length because I have touched upon this point in my previous amendment. I know there is the article 301 which specifies backward classes. I am not quite sure that it will be easy for the President to find out who are the backward classes. I do feel that this backward classes article will remain a dead article, because I know that people who will come in the name of the backward classes will come only for their own personal position and personal aggrandisement to insert themselves as backward classes to win their own personal ends I know people would come in the name of the backward classes only to get a few posts, leaving the poor masses of that community in the lurch. I am therefore strongly opposed to the inclusion of the term ‘backward classes’. Article 301 says “investigate the conditions of socially and educationally backward classes”. Now, What does that mean ? 80 per cent. of our people are illiterate. Are they all backward ? Sometimes people who are illiterate have a far better sense of argument than the literate people.

Therefore, Sir, I contend that there is no such class as a backward class. The Britishers wanted to dub many as backward classes and then play them up to the whole world and say that India consists of so many backward classes and so they do not deserve freedom. I do not want this term “backward classes” perpetuated in our Constitution. The sooner we do away with this, the better for our country, the better for our position in the world. Beyond the Scheduled Castes and the Scheduled Tribes, I do not want any kind of reservation for anybody. If there is any class which feels that their interests have not been justly represented in the services, they should go to the proper authorities and find the remedy. After hearing Sardar Patel, I do not think there will be any injustice to any class people who really deserve some kind of sympathy and justice. If there is any injustice, then our leaders are there who will look after their interests. With these few words, I commend my amendment for the acceptance of the House.

(Amendment Nos. 80, 258 and 284 were not moved.)

Shri H. V. Kamath : What about amendment No. 65 ?

Mr. President : I was just coming to that. So far we have taken up the amendments to amendment No. 64 moved by Mr. Munshi, which is an amendment to No. 63 which again relates to No. 43. No 43 was sought to be replaced by No. 63, which again is replaced by No. 64. Therefore I first took up the amendments to amendment No. 64. Now, if any Member is keen on moving any of the other amendments, I will see whether it fits in with No. 64 or not. If it fits in, I will allow that, otherwise not. I will just call the amendment numbers and if Members wish to move any of their amendments, they can say so.

No. 44, by Mr. Lakshminarayan Sahu and Mr. Chaliha.

Shri Kuladhar Chaliba (Assam : General) : Sir, I move

“That in amendment No. 63, above at the end of clause (2) of the proposed article 299 the words ‘for its approval, modification or addition’ be added.”

Mr. President : What amendment are you moving ?

Shri Kuladhar Chaliha : I am moving No. 71.

Mr. President : All right.

Shri Kuladhar Chaliha : Sir, the article merely says that such reports shall be laid before each House of the Parliament. We should positively mention there what the powers of the Parliament are in this regard. As such, these additional words will make the clause a little clearer than it is. My own experience is that many such reports are laid before the House, but very few people take care either to look into it or give effect to it. So, in order to be more specific, I have added these words. I trust the Drafting Committee and Dr. Ambedkar will see that it is changed. I commend my amendment to the acceptance of the House.

Mr. President : Does any Member wish to move any amendment ? Sardar Bhopindar Singh Man, you wanted to move some amendments.

Sardar Bhopinder Singh Man : Nos. 67 and 69 relate to the amendment that was to be moved by Mr. Munshi, No. 63.

Sir, I move :

“That in amendment No. 63 above in clause (1) of the proposed article 299, after the words ‘by the President’ the words ‘and a Special Officer for minorities for each State for the time being specified in Parts I and II and Part III of the First Schedule who shall be appointed by the Governor or Rajpramukh of the State, as the case may be’ be added.”

“That in amendment No. 63 above, in clause (2) of the proposed article 299, after the words ‘under this Constitution and’ the words ‘their representation in different legislatures and services of the country’ be inserted.”

“That in amendment No. 63 above, at the end of the Explanation to the proposed article 299, the words ‘Muslim’ Christians, and Sikhs’ be added.”

My first amendment states that the Minority Officers as originally proposed to be appointed in the States should be permitted to continued I feel that a Minority Officer appointed at the Centre will be at too distant a place to investigate and see the daily working of the Constitution. If Minority Officers are not there, this safeguard contained in article 299 will not be effective. After all, it is the daily life and daily administration and governance that count more than anything. I request that Minority Officers in the States should continue and there should not be merely one officer appointed at the Centre.

My other two amendments state that there should be Minority Officers to investigate, not only the safeguards contained in the Constitution, but also to look into matters pertaining to all minorities and We how they have fared so far as representation in legislatures is concerned or securing of services in the administrative machinery is concerned. There seems to be some confusion about minorities. Certain friends say that because the Minorities Advisory Committee resolved that there will be no political reservations in the legislatures, there will henceforward be no minorities in the country. I takes my breath away how a paper resolution can do away with minorities, and that too, in so short an interval as just a year or so.

The position of this Constituent Assembly, as understand from its previous decisions, is that they agreed that this country has got minorities. They classified these minorities into three groups—Group A, Group B and Group C. Not only that. I hold here another pamphlet published by the Ministry of Information and Broadcasting. They corroborate the same view and say the basis of these minorities is their religion. They mention the Minorities in the

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Indian Union as the Muslims, the Sikhs, the Christians, the Parsis and the Anglo-Indians. Now, to argue basically against this contention is to go behind their own words.

A happy sort of atmosphere has been brought about and the minorities henceforward repose their confidence in the good sense of the majority—not that they are wiped out altogether from our country. We march forward in the hope that no injustice will be done, but from that it should not be argued that henceforward the minorities cease to exist. After all, safeguards are just the instruments of securing the due share of minorities in the governance and administrative machinery of the country. If we are assured that no injustice will be done so far as governance or administrative machinery is concerned, naturally we will not ask for any political safeguards in the Assemblies or elsewhere.

It is a very daring experiment. I wish it success wholeheartedly. I am quite sure that it will succeed. It should succeed. I shall be very happy indeed if the fears of the minority communities are ultimately proved to be false. But to enable the experiment to succeed, I say that the cases of all the minorities should be reviewed and Minority Officers should be appointed for all the Minorities. After all, you are not giving anything. You are not giving any quota or any share or reserving anything. You only say that these Minority Officers will be reviewing the case of these minorities and scheduled castes. I take your word.

You are taking a great responsibility upon your shoulders. You promise that you will give us no cause for anxiety. Then may I ask Dr. Ambedkar why he feels shy of reviewing the cases of all the minorities ? I am quite sure you will be very just, you will be very fair and that the minorities will get their due share. Then, where is the harm if all these cases are reviewed periodically and brought before the Assembly and the Parliament ? It would give us a constitutional opportunity of reviewing our position. I shudder to think of the alternative, which will be only to raise some sort of agitation and dill it into your ears that an injustice has been done to us. Instead of resorting to certain unconstitutional methods, this provides a constitutional door. I believe there will be no injustice whatever, but that is no reason why these constitutional doors should be closed.

In all earnestness I plead before you—kindly do not abrogate these articles, kindly do not re-open what has already been conceded. I shall be failing in my duty if I do not represent to you that the abrogation of these articles 296 and last of all of 299 will have very widespread and serious repercussions so far as my community is concerned. You are taking away that mental assurance that you have all along given to us. You had said, “Do not worry, there will be somebody all the time observing the working of the Constitution”. Now you take that away. You say, “Justice or Injustice, case or no case, your case will not be reviewed.” I think it will be injurious to that psychological atmosphere and mental assurance that you had given. I think by taking away this machinery by which the working of the Constitution so far as minorities are concerned will be observed, you are taking away our last hope of securing a hearing and of approaching the Parliament in a constitutional manner and getting our cases periodically reviewed. I believe, Sir, it will not be disfiguring the Constitution, as the popular slogan goes.

In the end I must refer to a certain assurance which is said to have been given by some representatives of my community. It has created a certain impression, and I beg to differ from Sardar Patel and to say that it has created a false impression. Actually, so far as the assurance is concerned, (I do not

controvert the facts) I have asked those representatives about the assurance and I have got a copy with me containing the assurance. I have to remove the misunderstanding because it is creating a false impression in my community and elsewhere and hence there is the charge that the Sikhs are going back upon the undertaking they had given. In view of the fact that articles 296 and 299 had been agreed to by the House as recommended by the Advisory Committee, and the draft wording of which has been the same for the last one year and in addition to that they have agreed that Scheduled Castes will be included, the Sikh representatives said that henceforward they were not asking for any further assurances. But having got that assurance, if you now turn back and reopen the case in this House and thereby recede on articles 296 and 299, certainly our pledges cannot be thrown at our face to the effect that we are going back on them! Let me read the actual wording of the agreement. If there is anything else that should be in it, let that be produced, so that all this false impression can be removed. It runs :

‘We, the Sikh Members of the East Punjab Assembly, beg to refer to there port of the Sub-Committee of the Minorities Advisory Committee and to say that in so far as this relates to the problems of the Sikh community, the following points should be conceded in addition to the recommendations made in the said report...’

You agreed to certain recommendations made by Minorities Advisory Committee, which are clear and emphatic and so far as the sharing in the services is concerned, it is said that it will be conceded and a specific article relating to it will be incorporated in the draft Constitution. You also say that a Minority Officer for all the Minority Communities will be appointed. You conceded it and we gave the assurance that we will not be asking any further safeguards in addition to what already had been conceded.

Shri R. K. Sidhwa : What order ? What was conceded ?

Sardar Bhopinder Singh Man : What you conceded and you have not yet abrogated. You conceded it in August 1947.

Shri R. K. Sidhwa : There were subsequent developments.

Sardar Bhopinder Singh Man : I shall refer to that too. After this there was another report of the Advisory Committee dated 11th May 1949. If my friend were to read it carefully, not a single reference is there so far as these two resolutions are concerned. So far as the reservation in the Assembly is concerned, that has been taken away. So far as the other decisions, as regards the services and the Minority Officer for reviewing the cases of the minority communities are concerned, they stand and here I request my friend to produce a single sentence or line in the subsequent report submitted by the Advisory Committee and as approved by this House to show that in any case article 296 and article 299 have been abrogated.

Shri R. K. Sidhwa : I have been a Member of the Minorities Committee from the very inception and I have no recollection of this question having come up so prominently as my friend relates it now.

Sardar Bhopinder Singh Man : It is not my fault if my friend misses the point. But unfortunately, it is there incorporated in black and white. For me it is a very important point. You

Mr. President : What is the document you have been reading from ? You referred to some sort of pledge.

Sardar Bhopinder Singh Man : I was referring to certain assurances which were said to have been given by Sikh Members that henceforward they would not be opening any case and would not be bringing forward any matter or any other safeguards and I say this, in spite of Sardar Patel’s speech. As

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a matter of fact this has gone into the press as if there was some such assurance to give up all the minority rights.

Mr. President : Have you got that document with you ?

Sardar Bhopinder Singh Man : I have.

Mr. President : Than read it out.

Sardar Bhopinder Singh Man : I have read it.

Mr. President : I did not quite follow. If you read out that whole document to which Sardar Patel was referring...

Sardar Bhopinder Singh Man : I have this copy with me. If there is any other document, then I stand corrected with regard to what I have read.

Mr. President : I think you had better read it out so that Sardar Patel or anyone else can have a chance of finding out whether this is the document.

Sardar Bhopinder Singh Man : I have said I have no direct knowledge of that document. With regard to the document that those Sikh representatives gave, I have ascertained from them that this is the document containing the assurances that they gave.

Mr. President : Let us have the document.

Sardar Bhopinder Singh Man : Yes, the document reads as follows:

“We, the Sikh Members of the East Punjab Assembly, beg to refer to the report of the sub-Committee of the Minorities Advisory Committee and to say that in so far as this relates to the problems of the Sikh community, the following points should be conceded in addition to the recommendations made in the said report :—

1. The Sikh Backward Classes, namely, Mazhbis, Kabirpanthis, Ramdasias, Bawrias, Sareras and Sikligars, should be placed at par with the Scheduled Castes in the matter of their political rights. This can be done by—

- (a) including these classes in the Scheduled Castes enumerated in the Draft Constitution ; or
- (b) by abolishing the reservation of seats for all minorities including the Scheduled Castes in East Punjab; or
- (c) reserving seats for the said Sikh Backward Classes out of the quota of seats reserved for Sikhs. The estimated population strength of these classes among the Sikhs is roughly ten per cent ; these classes would get ten per cent. of the quota of Sikh seats.

2. In the matter of language, script and culture, either zonal arrangement should be provided in the Constitution, or, settled immediately by executive action.

3. Sikh minorities outside East Punjab should receive similar treatment as has been or might be granted to other minorities in the matter of political rights.

We would, respectfully suggest that for the elucidation of our case we should be given a hearing before the final decision is taken. We may and that we have no other communal safeguards to ask for so far as provision in the Constitution is concerned and that satisfaction along the lines suggested will go a long way to win over the Sikh masses for the national Cause.”

Shri R. K. Sidhwa : Who has signed it ?

Sardar Bhopinder Singh Man : The Sikh members and Sikh representatives signed it. The question is that we have to win over the confidence of the minorities. I do repeat here that it is going back upon certain things which you conceded yourself.

Shri R. K. Sidhwa : There is nothing in the article to say that we are going back.

Mr. President : Let me have a copy of the document. I shall have it ascertained from Sardar Patel whether it is the representatives' document or whether there is any other document and then I shall communicate it to you.

Sardar Bhopinder Singh Man : Mr. Sidhva knows perfectly well that in the light of the President's decision today that it is a reopening of the case

Mr. President : So far as the question of reopening is concerned the case was put on the basis that a decision has already been taken and I said that even if decision has been taken it can be reopened. By reopening I did not mean going back on anything that has been done. Reopening only meant that objection was taken on the ground that a certain decision had been taken and this decision which we are going to take now would be inconsistent with that; and I held that even if it was so, it can be taken up, if 25 per cent. of the Members were in favour of reconsidering the question.

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

“That in amendment No. 63, at the end of clause (2) of the proposed article 299, the words ‘for such action as Parliament may deem necessary’ be inserted.”

It is likely that when the report is presented to the President by the Special Officer appointed under this article, Parliament may consider it necessary or even essential that in view of the advance or the progress registered by the Scheduled Castes and Tribes it would be in the best interests of the country to abolish totally the distinction called Scheduled Castes or Tribes and there will be one big unified Hindu community. If this action were to be necessary, it cannot be left to the President alone. It is Parliament which has been invested with power in this Constitution to take the decision. Constitutional safeguards have been guaranteed to the Scheduled Castes and Tribes under this Constitution and it is only Parliament that can take a fundamental decision of this nature. Therefore, I desire that the report presented to Parliament should not be taken up for action by the President but the action taken shall be by the Parliament and not the President.

There is another amendment No. 75 which was in respect of amendment No. 63. But unfortunately that amendment has been substituted by amendment No. 64 just moved by Mr. Munshi. But my amendment would apply in a modified form to this amendment as well. In that amendment (No. 63) with regard to the explanation in that article.....

Mr. President : There is no explanation in amendment No. 63.

Shri H. V. Kamath : Instead of explanation we have got clause (3) in amendment No. 64. That amendment proposes reservation to the Anglo-Indian community as such. A specific reference to the Anglo-Indian Community is, in my humble judgment out of place. We have provided safeguards for the Scheduled Castes and Tribes.....

Mr. President : As, a matter of fact I think that the substance of No. 75 has been taken in clause (3). Clause (3) of amendment No. 64 does not include the Anglo-Indian community now.

Shri H. V. Kamath : It does, Sir. The last words are “the Anglo-Indian community” and I want that to be deleted.

Mr. President : Yes, I see.

Shri H. V. Kamath : The reference to Scheduled Castes and Tribes is construed as meaning also such backward classes as the President may by order specify after receiving the report of the Commission. The Anglo-Indian community is neither a backward class nor a Scheduled Caste. I do not

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know how it can be lumped together with these two classes- Scheduled Castes and backward communities. The only safeguard that will be provided to the Anglo-Indian community is representation in the House of the People and State Legislatures through nomination, in case the President or the Governor thinks that that community is not adequately represented in those legislatures, and that too for a period of ten years, After that the safeguard automatically lapses.

As regards the safeguard given to the Anglo-Indian community regarding reservation in the services, the Anglo-Indian community, not being a backward community at all, is even today, over-represented in some services, far in excess of its proportion to the population. Therefore I feel that in this clause (3) reference to the Anglo-Indian community is absolutely unnecessary. The Anglo-Indian community is not at all a religious community: it is at best, or at worst, a racial community and it has a racial basis. I think we should not give encouragement to racial communities in this country. If at all they want to join any minority they should join the Christian community in India. They have no right to exist as a separate Anglo-Indian community. I hope that necessary changes will be made in clause (3) of this article.

Shri Brajeshwar Prasad : Sir, I move :

“That in amendment No. 63 of List II (Second Week), for the proposed article 299. the following be substituted :—

- ‘299. (1) There shall be special officer for the Scheduled Castes and the Scheduled Tribes to be appointed by the President.
- (2) The special officer in consultation with the President may appoint a special officer for each State who shall work exclusively under his superintendence, direction and control.
- (3) The special officer appointed either for the Union or for a State shall not be a member either of the Scheduled Tribes, the Scheduled Castes or of such other backward classes as the President may on receipt of the report of a commission appointed under clause (1) of Article 301 of this Constitution by order specify.
- (4) The salaries, allowances and Pensions payable to the special officer for the Union and to the special officer for each State shall be expenditure charged on the revenues of India.
- (5) It shall be the duty of the special officer for the Union to make annual recommendations as to the steps that should be taken by the Union and by each State to improve the economic, educational and cultural level of the Scheduled Tribes, the Scheduled Castes or of such other backward classes as the President may on receipt of the report of a commission appointed under clause (1) of Article 301 of this Constitution by order specify and as to the sums that should be separately allotted in the annual budget of the Union Government and of each State Government for the purpose; and the President shall cause all such recommendations to be laid before Parliament.
- (6) Parliament shall have the power to reject or accept in whole or in parts any of the recommendations contained in the Report.
- (7) All State Governments shall be bound to make annual allotment in their budgets of such sums as Parliament may deem to be necessary for the purpose of giving effect to the recommendations contained in the Report of the special Officer for the Union.
- (8) Until the appointment of the commission and consideration of its Report by the President under clause (1) of Article 301 of the Constitution the backward classes shall consist of such castes and communities as may be determined by the President.
- (9) The President may delegate the power to the special officer for the Union to supervise and give effect to all or any recommendations made by the commission appointed under Article 301 and accepted by the President.

- (10) All appointments to be made under clauses (1) and (2) of this Article shall be made from the following category of persons—
- (a) Doctors
 - (b) Scientists
 - (c) Sociologists and
 - (d) Anthropologists
- (11) Parliament shall have the power to repeal or amend any or all of the Provisions of this Article’.”

Sardar Hukum Singh : Sir, I move....

Shri R. K. Sidhwa : Sir, this amendment was lost on a previous occasion. The inclusion of Christians, Sikhs and Parsees has been turned down.

Mr. President : This amendment relates to article 299. How could it have been lost, as article 299 has not been considered at all ? A similar amendment has been lost with reference to article 2% and not 299.

Shri R. K. Sidhwa : Here the Christians, the Sikhs and Parsees are mentioned. The principle has been rejected by the House in a previous article.

Sardar Hukum Singh : Mr. President, Sir, I beg to move :—

“That in amendment No. 63 above, in the explanation to clause (2) of the proposed article 299, after the word ‘means’ the words ‘the Muslims, the Christians, the Sikhs, the parsees the Anglo-Indians’ be inserted.”

Sir, I would not go over the ground that has already been covered.....

Shri K. M. Munshi : May I rise to point of Order’? The words of my amendment No. 64 only refer to “all matters relating to the safeguards”, that is only where safeguards are provided by the Constitution. No safeguards have been provided for the Muslims, Christians, Sikhs and Parsees. The only safeguards in the Constitution so far accepted are with regard to Anglo-Indians and the Scheduled Castes and Scheduled Tribes. Therefore, Sir, my submission is that there are no safeguards for the other communities and this amendment is out of order.

Sardar Hukum Singh : Under the Constitution there are safeguards.

Shri K. M. Munshi : There are no safeguards for these communities.

Sardar Hukum Singh : Under article 23 there are safeguards for minorities. That is also included in the Constitution.

Shri K. M. Munshi : Article 23 is fundamental, cultural right for which the safeguard is the Supreme Court and not the Special Officer.

Mr. President : The Special Officer may be called upon to report as to how that has worked. You can go to the Federal Court or to the Supreme Court and get its decision whether a particular article of the Constitution has been broken, but then the officer may also report whether a particular article in the Constitution has been given effect to and so. that is what Sardar Hukam Singh wants.

Shri K. M. Munshi : Sir, that is not a safeguard. It is not, with great respect, a safeguard. ‘Safeguard’ means a political safeguard for a community which has been provided, but fundamental right belongs to every citizen and if his right is infringed the only remedy that he has is to go to the Supreme Court. Supposing an officer is invested with the power to investigate into it, it has no value.

Mr. President : It has a certain value for administration purposes and the, Government can take note of the report of an officer that a particular right

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which has been conferred is not being observed or is not being respected. The Administration can take note of that and can deal with that.

Sardar Hukum Singh : If the violation is not taken to the Federal Court, then, would it not be the duty of the Government to see whether the minorities are being fairly treated or not or whether they are getting the justice or not ?

I am not afraid of the answer. I cannot go over the ground already covered and I would submit only one or two things. Even if my request and my amendment under 296 has been rejected, then it is all the more necessary that under 299 the Special Officer should be invested with the powers and authority to go into details of the safeguards and rights of all minorities and it should not be restricted to these Scheduled Castes and Scheduled Tribes alone. We have been told here that we should trust our leaders and we should trust the future. This is all right and everything conceded. Granting that everybody is honest the Government wants to do justice to every community, what then unless the Government know whether anything amiss has been done, whether any unfair treatment has been meted out, whether any pledges have been violated or whether fair treatment is being meted out to everybody ? Unless the Government has some source of knowing it, how will it be in a position to redress the wrongs ? Therefore, my submission is that even if it was considered that it was not necessary to include these minorities and to specify them under 296, it is very essential that the officer if he is to be appointed ought to go into these things to find out and report on the working of the Constitution so far as all the minorities are concerned, and it should not be restricted to one or two- classes only.

I take this opportunity of answering one thing that has already been said I put a question, but that has not been answered. I request the Honourable Mr. Munshi to answer that. I was told by the Honourable Sardar that if the Sikhs are sorry, then they can return what they have got and they can have the safeguards if they want. That was my complaint. I should like to know what they have got.. We are told that four backward classes have been included. Where are they included in any Schedule ? That is, what I want to know. There was a schedule and we had to sacrifice everything for getting those four backward classes included in that Schedule. This Schedule is absolutely gone now. Under article 300-A, it is left to the President to consult the Governor and then to specify who would be the Scheduled Castes. I have paid the price, as I am told I have sacrificed everything that I had, but I have got nothing in the Constitution. This is my complaint and that shall be answered.

(Amendment No. 80 was not moved.)

Mr. President : These are all the amendments we have got. Does any Member wish to say anything ?

Honourable Members : No, Sir.

Shri K. M. Munshi : Sir, I have very few words to say in reply. As regards the amendment of my honourable Friend, Mr. Chaliha, he will see that the Special Officer's report is a kind of expert's report which comes before the Parliament. The Parliament certainly will give a right to discuss it. Any member can raise a debate on it, but surely a report of an expert, who has collected facts, cannot be modified or added to by a legislature. It only contains the materials placed before the Parliament for its decision and therefore, I submit, Sir, that amendment No. 71 is really inappropriate.

With regard to amendment No. 80 of honourable Mr. Kamath, I am really surprised that he wants the deletion of the words "and also to the Anglo-Indian community". By sections 297 and 298 the Constitution has given specific safeguards to the Anglo-Indian community and the whole object of this article 299 is to see that the working of such of the political safeguards given to some of the communities as have been accepted by the Constitution should be properly investigated into and placed before the Parliament. If the Anglo-Indian community has certain safeguards, then it is the function of this officer to scrutinize their working.

Then as regards amendment No. 74 where the honourable Sardar Hukam Singh wants to introduce the Muslims, the Christians, the Sikhs and the Parsaes in addition to Anglo-Indians, I am of opinion, Sir, with great respect that the safeguards contemplated by article 299 are not fundamental rights which are attached to every citizen. They are only 'safeguards', safeguards meaning political safeguards for the protection of certain well defined sections of the citizens. Otherwise, it would involve the special officer going into the working of all the fundamental rights given by the Constitution. So far as I understand my amendment, it only means that the Scheduled Castes, the Scheduled Tribes, the Anglo-Indian community and the backward classes who are under the fundamental right article 10, given specific safeguards, and the officer should examine whether they have been properly worked or not. That being this thing, it is not possible for me to accept the words "Muslims, Christians, Sikhs" etc. mentioned in amendment No. 74.

Sir, I have only one word more to say with regard to Sardar Bhopinder Singh Man's amendment No. 67.

Shri H. V. Kamath : What about amendment 72 ?

Shri K. M. Munshi : As regards amendment No. 72, it is not necessary to put in the words suggested, viz., "for such action as Parliament may deem necessary". Once the report is before the Parliament, as I stated already, a debate can be raised on it and a resolution can be moved. It is implied; it is not necessary to add these words.

Sardar Bhopinder Singh Man by his amendment No. 67, wants that there should be a special officer in each State. Well, if the special officer envisaged in this article requires assistance of other officers, they will be appointed. But there is no need for appointing a separate officer for each State. That would only complicate matters. The object is to see whether the whole thing is worked on one principle throughout the country. We do not want separate officers in each State as permanent guardians. The honourable the Mover of the amendment has also introduced the word 'minorities' in it. We have removed the word 'minorities' from Article 296 and it is entirely inappropriate in 299. In passing, he tried to reply to what Sardar Patel had already said on the safeguards for Sikhs. I do not want to repeat what Sardar Patel said. I shall deal with only one point to which he referred and which I think I should refer. I was a member of the Committee appointed for the purpose of looking into the Sikh question. From the beginning of the, Advisory Committee and the Minorities Committee, I had something or other to do with all the stages of the negotiations. I can assure the House that at the time when the Advisory Committee met on the last occasion, there was no question of providing safeguards for any religious minority. The negotiations proceeded on the footing that except the backward classes who are economically and socially backward, and the Scheduled Castes and Tribes who have a special claim of their own. no other minority should be recognised in the Constitution. The honourable Member read some statements made by certain Sikhs. Unfortunately, in the short time. at my disposal. I have not been able to reclaim the

[Shri K. M. Munshi]

different documents; but of one thing I can assure the House. When the matter came up before the Advisory Committee, the Sikh members withdrew every sort of claim for any safeguards whatever in consideration of the Sikh scheduled classes being placed among the Scheduled Castes and given the privileges, which the latter were entitled to. Any cry raised now that they did not do so is an after-thought.

I do not want to say anything more about it and the kind of allegations which have been made are entirely unwarranted. Even with regard to the Muslim community, the debate centered round the question of representation. But it was understood that even so far as they were concerned also, the claims as regards service were given up. They were not expressly mentioned in the report. The basis of that decision was that we should not recognize in the Constitution any religious minority of this nature. That was the basis. I submit it is too late to go back upon this.

Sardar Hukum Singh : My question has not been answered. Have these four Sikh classes been included in the Scheduled Castes ?

The Honourable Dr. B. R. Ambedkar : Of course, they will be.

Shri K. M. Munshi : The President is empowered to issue, under article 300-A, a list of Scheduled Castes. In that, these Scheduled Castes will find a place.

Sardar Hukum Singh : Where is the guarantee that the President will include these people in that list ? We have given up all safeguards to secure this in the Constitution. That has not been done.

Shri K. M. Munshi : The President has that power. The President is sure to keep to the pledge which has been given. This decision finds a place in the Advisory Committee's Report that the Sikh Scheduled Castes will form part of the Scheduled Castes and provided with the safeguards under article 296 which we have already passed. There is no question of going back upon that pledge, you may take it from me. I repeat the Sikh Scheduled Castes will be included in the list of Scheduled Castes and Scheduled Tribes in the Punjab.

Mr. President : I will now put the amendments to vote, one by one. Although these amendments have been moved with reference to amendment No. 63, they would fit in with amendment No. 64 and therefore they have been allowed to be moved. If any one is accepted, we shall put it in the right place.

The question is :

"That in amendment No. 63 above, in clause (1) of the proposed article 299, after the words 'by the President' the words 'and a special Officer for minorities for each State for the time being specified in Parts I and II and Part III of the First Schedule who shall be appointed by the Governor or Rajpramukh of the State, as the case may be added.'

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 63, above, in clause (2) of the proposed article 299, after the words 'under this constitution and' the words 'their representation in different legislatures and services of the country' be inserted."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 63 above, at the end of clause (2) of the proposal article 299, the words 'for its approval, modification or addition' be added."

The amendment was negatived.

Mr. President : The question is :

“That in amendment No. 63 above, at the end of clause (2) of the proposed article 299, the words ‘for such action as Parliament may deem necessary’ be inserted.”

The amendment was negatived.

Mr. President : The question is :

“That in amendment No. 63 above, in the Explanation to clause (2) of the proposed article 299, after the word ‘means’ the words ‘the Muslim, the Christians, the Sikhs, the Parsees, the Anglo-Indians; be inserted.”

The amendment was negatived.

Mr. President : The question is:

“That in amendment No. 63 above, in the Explanation to the proposed article 299, for the words ‘and includes the Anglo-Indian community’ the words ‘and includes such community or communities as the President may then specify’ be substituted.”

The amendment was negatived.

Mr. President : The question is:

“That in amendment No. 63 above, at the end of the Explanation to the proposed article 299, the words ‘Muslim, Christians, and Sikhs’ be added.”

The amendment was negatived.

Mr. President : The question is :

“That in amendment No. 64 above, in clause (3) of the proposed article 299, the words ‘to such other backward classes as the President may on receipt of the report of a Commission appointed under clause (1) of article 301 of this Constitution by order specify and’ be deleted.”

The amendment was negatived.

Mr. President : Amendment No. 80. It was not moved by Mr. Munavalli. I think it is covered by the other amendment. I had better put it to vote.

The question is :

“That in amendment No. 64 above, in clause (3) of the proposed article 299, the words and also to the Anglo-Indian community’ be deleted.”

The amendment was negatived.

Mr. President : The question is :

“That in amendment No. 63 of List II (Second Week), for the proposed article 299, the following be substituted :—

- ‘299. (1) There shall be a special officer for the Scheduled Castes and the Scheduled Tribes to be appointed by the President.
- (2) The special officer in consultation with the President may appoint a special officer for each State who shall work exclusively under his superintendence, direction and control.
- (3) The special officer appointed either for the Union or for a State shall not be a member either of the Scheduled Tribes, the Scheduled Castes or of such other backward classes as the President may on receipt of the report of a commission appointed under clause (1) of Article 301 of this Constitution by order specify.
- 4) The salaries, allowances and pensions payable to the special officer for the Union and to the special officer for each State shall be expenditure charged on the revenues of India.
- (5) It shall be the duty of the special officer for the Union to make annual recommendations as to the steps that should be taken by the Union and by each State to improve the economic, educational and cultural level of the Scheduled Tribes, the Scheduled Castes or of such other backward classes as the President may on receipt of the report of a commission appointed under clause (1) of

[Mr. President]

Article 301 of this Constitution by order specify and as to the sums that should be Separately allotted in the annual budget of the Union Government and of each State Government for he purpose; and the President shall cause all such recommendations to be laid before Parliament.

- (6) Parliament shall have the power to reject or accept in whole or in parts any of the recommendations contained in the Report.
- (7) All State Governments shall be bound to make annual allotment in their budgets of such sums as Parliament may deem to be necessary for the purpose of giving effect to the recommendations contained in the Report of the special officer for the Union.
- (8) Until the appointment of the commission and consideration of its Report by the President under clause (1) of Article 301 of the Constitution the backward classes shall consist of such castes and communities as may be determined by the President.
- (9) The President may delegate the power to the special officer for the Union to supervise and give effect to all or any recommendations made by the commission appointed under Article 301 and accepted by the President.
- (10) All appointments to be made under clauses (1) and (2) of this Article shall be made from the following category of persons:
 - (a) Doctors
 - (b) Scientists
 - (c) Sociologists and
 - (d) Anthropologists
- (11) Parliament shall have the power to repeal or amend any or all of the provisions of this Article.’;”

The amendment was negatived.

Mr. President : I think these are all the amendments. I put article 299, (amendment No. 64), as moved by Mr. Munshi.

The question is :

“That with reference to amendment No 63 above, for article 299, the following be substituted :—

Special Officer for ‘299. (1) There shall be a Special Officer for the Scheduled Castes and the Scheduled Tribes etc. Scheduled Tribes to be appointed by the President.

- (2) It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under this Constitution and report to the President upon the working of those safeguards, at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament.
- (3) In this article, the reference to the Scheduled Castes and Scheduled Tribes shall be construed as including the reference to such other backward classes as the President may on receipt of the report of a Commission appointed under clause (1) of article 301 of this Constitution by order specify and also to the Anglo-Indian community’.”

The motion was adopted.

Article 299, as amended, was added to the Constitution.

Mr. President : We shall adjourn now. We sit again at four o’clock.

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

The Assembly met after Lunch at Four of the Clock.
Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

STATEMENT RE : REPORT OF MINORITIES ADVISORY COMMITTEE.

Mr. President : Before we take up the other articles which are on the Order paper today I desire to make one statement. When articles 296 and 299 were under discussion this morning, the Honourable Sardar Patel referred to a written document. One honourable Member, Sardar Bhopinder Singh Man, read out portions of a document which he thought was the document to which reference was being made by the Honourable Sardar Patel. As I had some doubts, I thought it would not be right to let only a part of the document go on the record and I requested the honourable Member to read out the whole of the document which he had in his hand which he kindly did. Since then I have made enquiries and I find that that is not the document to which the Honourable Sardar Patel referred in his speech. I desire to read out the document which Sardar Pat, I had in mind so that the other document having gone on record, this might also go on record and any understanding which might have been created on account of that document may be cleared.

Sardar Sochet Singh (Patiala & East Punjab States Union) : Is it possible to circulate copies of this Document ?

Mr. President : Of course, but I shall read it now. This document is dated the 10th May 1949. The Advisory Committee meeting was held on the 11th May and evidently the decision that was taken in the Advisory Committee was in pursuance of this document. It is signed by three. Members, the honourable Sardar Ujjal Singh, the honourable Sardar Jogindar Singh Mann and Sardar Gurbachan Singh Bajwa. I will now read out the whole document.

A meeting of the Sikh Members of the East Punjab Legislative Asssembly and of the Constituent Assembly was held in Delhi on the 10th May. The following attended:—

1. Sardar Kapoor Singh
2. Gyani Kartar Singh
3. Sardar Swaran Singh
4. Sardar Ishar Singh Majhail
5. Sardar Ujjal Singh
6. Sardar Joginder Singh Mann
7. Bhai Piara Singh
8. Sardar Inder Singh
9. Sardar Gurbachan Singh Bajwa
10. Sardar Dalip Singh Kang
11. Sardar Ajit Singh
12. Sardar Shiv Saran Singh
13. Sardar Narottam Singh
14. Sant Narinder Singh
15. Sardar Hukam Singh
16. Sardar Tara Singh
17. Sardar Rattan Singh Moga
18. Sardar Rattan Singh Logarh
19. Sardar Gurbachan Singh, Ferozepore
20. Sardar Sajan Singh Mirjandpuri
21. Sardar Jagjit Singh Mann
22. Sardar Sardul Singh.

Sardar Kapoor Singh, Speaker, East Punjab Legislative Assembly, presided. The following proposals were unanimously adopted in regard to the safeguards for Sikh Minorities to be provided in the Constitution. These proposals have also the support of almost all the Members who could not be present at the meeting.

[Mr. President]

1. The Sikh Backward Classes, viz., Mazhabis, Kabirpanthis, Ramdasias, Baurias, Sikligars etc. should be given the same privileges in regard to representation in the Legislatures and other Political concessions in the East Punjab and PEPSU as may be provided for the Scheduled Castes. For this purpose, either these Classes may be included in the Scheduled Of Scheduled Castes enumerated in the Draft Constitution or seats may be reserved for them on population basis out of the quota reserved for Sikhs.

2. In the East Punjab, seats should be reserved for Sikhs according to their population with right to contest additional seats.

3. In Provinces other than the East Punjab and the Centre, the Sikh Minorities where they are entitled to representation on the strength of their numbers should have seats reserved for them and when adequate numbers are not returned by election, their strength should be made good by nomination.

4. The Sikhs will be prepared to give up reservation in the East Punjab if Sikh and Hindu Scheduled Castes are lumped together and seats reserved for them on the strength of their population.

In case these proposals are not accepted, the whole question of safeguards for Sikh Minorities may be referred to arbitration in accordance with the assurances given by the Congress.

(Sd.) Ujjal Singh
(Sd.) Joginder Singh Mann
(Sd.) Gurbachan Singh Bajwa,

Dated the 10th May 1949.

I do not desire to make any comment. If both the documents are read together, Members will be able to draw their own inferences.

Article 48

Mr. President : We shall now take up the various articles which are mentioned in the Order paper today beginning with article 48. These are all in the nature of amendments to articles which have already been accepted. Wherever necessary, I suppose the formal permission of the House will be taken altering the decisions previously taken. Article 48.

Shri T. T. Krishnamachari (Madras : General) : Mr. President, Sir, from Article 48 till practically the end of article 303 of the First Schedule, all of them, excepting 273A and 302 AA. require reopening of articles that have been passed already and I therefore submit that the permission of the House for reopening these articles might be taken, if the Chair so wishes.

Mr. President : The question is:

“That the House give leave for reopening these decisions.

The motion was adopted.

Shri T. T. Krishnamachari : Mr. President, I move—

“That in clause (3) of article 48, for the words ‘The President shall have an official residence’ the words ‘The President shall be entitled without payment of rent to the use of his official residences’ be substituted.”

Sir, I see that my Friend Mr. Sidhva has an amendment to my amendment. But I would invite his attention to the amendment this House has accepted yesterday in respect of Part VIA—the amendment moved by any friend the Honourable Santhanam—which reads like this :

“Unless he has his own residence in the capital of his State, the Rajpramukh shall be entitled to the use of an official residence without payment of rent, and there shall be paid to the Rajpramukh such allowances . . . etc.”

Subsequently the article relating to the Governors had to be brought into line with this provision. This was accepted by the House yesterday. That is my reason for bringing forward this amendment. I do hope Mr. Sidhva will

not, therefore, press his amendment, in view of the fact that we are merely following the line indicated by the House in accepting the Honourable Mr. Santhanam's amendment of yesterday, in respect of Part VIA.

Shri R. K. Sidhwa : Sir, the Honourable Shri Santhanam's amendment related to Rajpramukhs; but my amendment says that as far as the President is concerned he will be entitled to use the Government House as his official residence without any rent. So I do not know how Mr. Santhanam's amendment will meet this purpose.

Shri T. T. Krishnamachari : I would ask my Friend Mr. Sidhwa to read the amendment once again. It says—

“The President shall be entitled without payment of rent to the use of his official residences.”

Actually Mr. Sidhwa has missed the point. The words used are “official residences.” The President may have more than one official residence. The Governor-General has a residence in Delhi and another in Simla. Therefore, these words are used and the expert-advice is that this will fill in the bill completely, and so I feel no change is required. I would therefore, request Mr. Sidhwa not to press his amendment.

Prof. Shibban Lal Saksena (United Provinces: General): Sir, Mr. Sidhwa wants to say that the Government House will be used only for the residence of the President. But the future Parliament may like to put it to some other use also.

Shri R. K. Sidhwa : I thought I need not press my amendment, but from what Prof. Shibban Lal has said. I feel that I must press it. He suggested that the Government House may be utilised for some other purpose. It may be utilised by a wandering Sanyasi as Prof. Shibban Lal desires. I do not want any doubt to be left, and so I want the words “Government House” to be specifically mentioned, as I have done in my amendment. It may be utilised for other purposes also, as we have used it for the exhibition. But it should be laid down that the Government House should be utilised for the residence of the President.

Mr. President : But Government House is not excluded for the residence of the President, by Mr. Krishnamachari's amendment. Need we have any discussion about this matter?

Shri H. V. Kamath : Mr. President, Sir, the other day I opposed the provision regarding residences without payment of rent for Supreme Court Judges, but Dr. Ambedkar in reply pointed out that articles already passed by this House have provided residences for the Governors and the President without payment of rent, and his answer to me was that at that time I did not object to the provision of residences to the Governors and President without payment of rent. Now it seems some doubt has arisen in his mind whether those earlier articles would be open to any other interpretation, that they may be interpreted as meaning residence on payment of rent, and not without payment of rent. His argument the other day was that as regards judges, those who come from places far off from the capital should not be put to the trouble of searching for houses in Delhi. That was the point that he made out the other day. On the same argument, I would suggest to him that it would not be improper or unwise to provide the Ministers also with residences without payment of rent. After all, when you provide the supreme judiciary with rent-free residences, and the Executive Head also a similar rent-free residence, I think it would be a wise and reasonable course to provide these other dignitaries with like residence—I mean the Ministers as well. I hope the House will agree with me that there must be this constitutional provision.

Mr. President : That question does not arise in connection with the amendment before the House.

Shri H. V. Kamath : Dr. Ambedkar was quite clear when he gave his answer to me the other day, but now he seems to have some doubt in his own mind, and he has come now with an amendment seeking to provide residences to Governors and the President, without payment of rent. We should, proceeding logically, provide rent-free accommodation to Ministers also.

The Honourable Dr. B. R. Ambedkar : Sir, if I may say a word. This amendment is merely consequential or analogous to the provision we have made with regard to the Rajpramukhs. In the clauses that were moved the other day with regard to the residences of Rajpramukhs, we have definitely stated that they will be rent-free. On comparing the similar clauses relating to the Governors, we found that somehow there was a slip and we did not mention rent-free houses. It is to make good that lacuna, and to bring the cases of the Governors and the President on the same footing as the Rajpramukhs that this amendment is needed.

With regard to the question of Ministers, that will be regulated by law made by Parliament. Whether Parliament will be prepared to give them salary with house, and if with house, whether it will be free of rent or with rent, are all matters that will be regulated by Parliament, because the offices of Ministers are political offices dependent upon the goodwill and the confidence of the House, and it seems to me that Mr. Kamath will very easily understand that it would be riot proper to remove the Ministers from the purview and jurisdiction of Parliament.

Mr. President : I would like to put it to vote.

The question is:

“That in clause (3) of article 48, for the Words ‘The President shall have an official residence, the words ‘The President shall be entitled to the use of the Government House ,without payment of rent’ be substituted.”

The amendment was negatived.

Mr. President : Then I put the amendment moved by Shri T. T. Krishnamachari. The question is:

“That in clause (3) of article 48, for the words ‘The President shall have an official residence’ the words ‘The President shall be entitled without payment of rent to the use of his official residences’ be substituted.”

The amendment was adopted.

Shri T. T. Krishnamachari : Sir, I move amendment No. 360.

“That clause (5a) of article 62 be omitted.”

The reason for this is, as I told the House the other day on behalf of Dr. Ambedkar, that we do not propose to move Schedule III A and also the Schedule which deals with Instructions to Governors. The clause in question reads thus: “ (5a) In the choice of his ministers and in the exercise of his other functions under this constitution, the President shall be generally guided by Instructions set out in Schedule III A.” Actually, since Schedule III A is not moved, this clause becomes superfluous. Therefore I have moved for its omission.

Shri H. V. Kamath: Sir, you might remember that some months ago you raised the important point whether the President would always be bound to accept the advice of his Council of Ministers. Our Constitution is silent on that point. It only says that there shall be a Council of Ministers to aid and advise the President. Dr. Ambedkar at that time undertook to insert some provision somewhere in the Constitution in order to make this point clear.

That is my recollection. The President will kindly say whether I am right or wrong. Nowhere in the Draft Constitution has this point been clarified I hope Dr. Ambedkar will do so, and not leave it vague as at present.

The Honourable Dr. B. R. Ambedkar : Sir, I wish I had notice of this, so that I could give the necessary quotations. But I can make a general statement The point whether there is anything contained in the Constitution which would compel the President to accept the advice of the Ministry is really a very small one as compared with the general question.' I propose to say something about the general question.

Every Constitution, so far as it relates to what we call parliament democracy, requires three different organs of the State, the executive, the judiciary and the legislature. I have not anywhere found in any Constitution a provision saying that the executive shall obey the legislature, nor have I found anywhere in any Constitution a provision that the executive shall obey the judiciary. Nowhere is such a provision to be found. That is because it is generally understood that the provisions of the Constitution are binding upon the different organs of the State. Consequently, it is to be presumed that those who work the Constitution, those who compose the Legislature and those who compose the executive and the judiciary know their functions, their limitations and their duties. It is therefore to be expected that if the executive is honest in working the Constitution, then the executive is bound to obey the Legislature without any kind of compulsory obligation laid down in the Constitution.

Similarly. if the executive is honest in working the Constitution, it must act in accordance with the judicial decisions given by the Supreme Court. Therefore my submission is that this is a matter of one organ of the State acting within its own limitations and obeying the supremacy of the other organs of the State. In so far as the Constitution gives a supremacy to that is a matter of constitutional obligation which is implicit in the Constitution itself.

I remember, Sir, that you raised this question and I looked it up and I had with me two decisions of the King's Bench Division which I wanted one day to bring here and refer in the House so as to make the point quite clear. But I am sorry I had no notice today of this point being raised. But this is the answer to the question that has been raised.

No constitutional Government can function in any country unless any particular constitutional authority remembers the fact that its authority is limited by the Constitution and that if there is any authority created by the Constitution which has to decide between that particular authority and any other authority, then the decision of that authority shall be binding upon any other organ. That is the sanction which this Constitution gives in order to see that the President shall follow the advice of his Ministers, that the executive shall not exceed in its executive authority the law made by Parliament and that the executive shall not give its own interpretation of the law which is in conflict with the interpretation of the judicial organ created by the Constitution.

Shri H V. Kamath : If in any particular case the President does not act upon the advice of his Council of Ministers, will that be tantamount to a violation of the Constitution and will he be liable to impeachment ?

The Honourable Dr. B. R. Ambedkar : There is not the slightest doubt about it.

The Honourable Shri K. Santhanam (Madras: General): I may add to Dr. Ambedkar's statement, and point out that there are certain marginal cases in which the President may not accept the advice of the Ministers.

[The Honourable Shri K. Santhanam]

When a Ministry wants dissolution it will be open to the President to say that he will instal another Ministry which has the confidence of the majority and continue to run the administration. There are some marginal cases where he may have in the interests of responsible government itself to over-ride the advice of his responsible Ministers.

The Honourable Dr. B. R. Ambedkar : I would only like to say one thing in reply. That was once the position. It has been defined very clearly in Macaulay's History of England what the King can do. But I say that these are matters of convention. In Canada this question arose when Mr. Mackenzie King wanted dissolution. The question was whether the Governor-General was bound to give a decision or whether he was free to call the leader of the Opposition to form an alternative Ministry. On the advice of the British Government, the Governor-General accepted the advice of Mr. Mackenzie King and dissolved the Parliament.

Shri H. V. Kamath : Instead of Dr. Ambedkar's *obiter dictum* why not have a Constitutional provision?

The Honourable Dr. B. R. Ambedkar : We cannot discuss this question in this way.

Mr. Naziruddin Ahmad : We have now opened up a very debatable proposition, namely, whether the Ministry and the President would be bound to follow the decision of Parliament. The ruling on the British Constitution on this point will not really be relevant. The British Constitution has long-established conventions. There is no statutory enactment. The powers of the King and of the Executive are well-known through the centuries. But ours is going to be a statutory constitution. So I think we should have some provision to make the point clear. Otherwise it may one day lead to an impasse. The precedent of the British Parliament in the King's Bench Division will not at all help us. So far as the Canadian precedent is concerned, that is also based upon conventions and understandings established for a long services of years. So far we have established no precedent at all to fall back upon. But as this is reopening a dead subject I do not think we need proceed further with this discussion. But we cannot take the opinion of Dr. Ambedkar as binding.

Shri Alladi Krishnaswami Ayyar (Madras: General): Sir, I did not want to interpose in the debate, but I find that the point raised as to the necessity of a provision is entirely without substance. We have provided in article 61(3) that the Council of Ministers shall be collectively responsible to the House of the People. If a President stands in the way of the Council of Ministers discharging that responsibility to the House he will be guilty of violation of the Constitution and he will be even liable to impeachment. Therefore it is merely a euphemistic way of saying that the President shall be guided by the advice of his Ministers in the exercise of his functions. This Council of Ministers will be collectively responsible to the House of the People, and the House of the People must meet all situations in regard to the budget, in regard to legislation, in regard to every matter connected with the administration of the country. Therefore, if the Council of Ministers is to discharge their responsibility, it will be the duty of the President to see that the Constitution is obeyed and therefore article 61 along with clause (3) of article 62 make quite clear all the incidence of responsible government. Otherwise we will have a detailed list of all the incidence of responsibility; that the Prime Minister is responsible when dissolution of the Parliament is to be effected, what exactly the advice or the occasions when the advice tendered by the Council should be followed by the President, etc. Some such attempt was made in Ireland on account of the distrust of the Crown in those days. In the earlier Irish Constitution, some

provisions were inserted stating in detail what are the incidence of responsibility. Now, if you just look at Canada, or Australia, or any other Constitution in which responsible government obtains or some semblance of responsible government obtains, there are no detailed provisions. The German pandits who framed the German Constitution attempted some kind of definition but that resulted in failure as we know as soon as a conflict between the powers of the President and of the Ministry arose, and that led to the collapse of the German Reich. Therefore, under those circumstances, I venture to submit that there is absolutely no necessity for setting out in detail what are the functions and the incidence of responsible government in an article of the Constitution.

Prof. Shibban Lal Saksena : Mr. President, Sir, we have framed a Constitution in which we have provided- for even very small details. Our Constitution differs from the Constitution of England in that the English Constitution is based on conventions. Here in a vital matter like this, we have not stated anywhere that the President is bound to call the Leader of the majority party to form the Cabinet and that he is bound to accept the advice of the Ministry. The Schedule providing for an Instrument of Instructions has also been taken away. Dr. Ambedkar has just now explained to us that conventions on this question have developed in other countries. I had hoped when Schedule IV was being deleted, provisions will be made in the Constitution to cover these points. In fact, at one time Dr. Ambedkar told me that we should frame all these details because we were just commencing a big experiment in democracy. Now that we are providing even for small details in the Constitution, I do feel that these fundamental things, that the President shall be bound to call the leader of the majority party to form the Cabinet, and that he will be bound to accept the advice of the Cabinet, should be incorporated in some instrument of instructions or in some articles of the Constitutional.

Mr. President : I think we have discussed this matter enough. Mr. Krishnamachari, do you want to say anything ?

Shri T. T. Krishnamachari : No. Sir, Dr. Ambedkar has replied.

Shri H. V. Kamath : What is your own reaction to the debate. Sir ? The issue was originally raised by you.

Mr. President : It is not a question of my reaction. It is for the House to decide.

Mr. Naziruddin Ahmad : Permission may be given to reopen the matter.

The Honourable Shri K. Santhanam : This is purely consequential.

Mr. President : I have to put this amendment to the vote. That is all my reaction.

The question is

“That clause (5a) of article 62 be omitted.”

The amendment was adopted.

Shri T. T. Krishnamachari : Sir, I move :

“That clause (6) of article 67 be omitted.”

This is a very important clause and I can appreciate the vigilance of my honourable Friend Mr. Shibban Lal Saksena in moving a negative amendment to this amendment. I would at once tell the House that this important clause

[Shri T. T. Krishnamachari]

which deals with election to the House of the People on the basis of adult franchise is not being omitted in any lighthearted manner. I would like to ask the House to refer to article 289-B which reads thus:—

“The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult franchise; that is to say, every citizen, who is not less than twenty one years of age on such date as may be fixed in this behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or I illegal practice, shall be entitled, to be registered as a voter at any such election.”

Substantially the whole of clause (6) of article 67 has been produced in 289-B which the Drafting Committee felt was the proper place for putting in the qualifications of voters. Therefore, Sir, clause (6) of article 67 is no longer necessary and that is the provocation for my moving this amendment.

(Prof. Shibban Lal Saksena did not move his amendment.)

Mr. President : The question is :

“That clause (6) of article 67 be omitted.”

The amendment was adopted.

Shri T. T. Krishnamachari : Sir, I move :

“That for clause (7) of article 67, the following clause be substituted:—

‘(7) The representation in the House of the People of the territories comprised within the territory of India but not included within any State shall be such as Parliament may by law provide.’”

Sir, the original clause (7) reads thus:

“Parliament may, by law, provide for the representation in the House of the People of territories other than States.”

The House will remember that we passed yesterday a new article 67-A which is more or less an enabling article. It does not wholly take away the need for a clause like clause (7) and it was felt that this clause must be amplified in the manner suggested in my amendment.

Mr. President : There is no amendment to this. The question is:

“That for clause (7) of article 67, the following clause be substituted :—

‘(7) The representation in the House of the People of the territories comprised with in the territory of India but not included within any State shall be such as Parliament may by law provide.’”

The amendment was adopted.

Shri T. T. Krishnamachari : Mr. President, I move

“That for the proviso to article 109 the following proviso be substituted:—

‘Provided that the said jurisdiction shall not extend to—

- (i) a dispute to which a State for the time being specified in Part III of the First Schedule is a party, if the dispute arises out of any provision of a treaty, agreement, covenant, engagement, *sanad* or other similar instrument which was entered into or executed before the date of commencement of this Constitution and has, or has been, continued in operation after that date,

- (ii) a dispute to which any State is a party, if the dispute arises out of any provision of treaty, agreement, covenant, engagement, *sanad*, or other similar instrument which provides that the said jurisdiction shall not extend to such dispute’.”

I would request honourable Members to refer to, the Draft Constitution before this article was passed by the House. They will find these two provisos reproduced there word for word. It was felt at the time we moved this Draft Article 109 that in the circumstances in which we were then placed we could not ask the House to pass a proviso like proviso (1) and hence there is no proviso in the article as accepted by the House covering the case of States in para III as we had for its omission and only the incorporation of proviso (2) in the terms in which it has been then accepted by the House. But now circumstances have, changed and we find that a proviso similar to proviso (1) of the original draft has to find a place and therefore I have moved this amendment. I hope the House will accept it.

Mr. President : The question is:

“That for the proviso to article 109 the following proviso be substituted :

‘Provided that the said jurisdiction shall not extend to—

- (i) a dispute to which a State for the time being specified in Part III of the First Schedule is a party, if the dispute arises out of any provision of a treaty, agreement, covenant, engagement, *sanad* or other similar instrument which was entered into or executed before the date of commencement of this Constitution and has, or has been, continued in operation after that date;
- (ii) a dispute to which any State is a party, if the dispute arises out of any provision of a treaty, agreement, covenant, engagement, *sanad*, or other similar instrument, which provides that the said jurisdiction shall not extend to such dispute’.”

The amendment was adopted.

Article 112

Shri T. T. Krishnamachari : May I request you to hold over this article till tomorrow ? There are certain Members in this House who have represented that they would like to examine this article a little further, and if it is not inconvenient, I would request the chair to hold it over till tomorrow.

Mr. President : It is held over. We will take up amendment No. 365, Article 119.

Shri T. T. Krishnamachari : In moving amendment No. 365, I would like you to permit me to incorporate in this amendment, amendment No. 388 which I have tabled today. Sir, I move :

“That article 119 be renumbered as clause (1) of article 119, and to the said article as so renumbered the following clause be added :—

- (2) The President may, notwithstanding anything contained in clause (1) of proviso to article 109 of this Constitution, refer a dispute of the kind mentioned in the said clause to the Supreme Court for opinion and the Supreme Court may, after such hearing as it thinks fit, report to the President its opinion thereon.”

This again happens to be part of article 119 as it originally appeared in the Draft Constitution. Practically word for word, except for the minor variations, I have introduced in my subsequent amendment with regard to the last three lines of this amendment, it appeared in the original article 119. We have now felt that it ought to be restored, though it was not originally put in 119 as it

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was passed by the House. The intention is more or less self-explanatory. It is a question of empowering the President to refer a matter like the one mentioned in the amendment to the Supreme Court for its opinion and for the Supreme Court to report to the President its opinion thereon and it varies vitally from the provision of article 119 as it stands now. It is found necessary in circumstances now present in view of the enlargement of the scope of the Constitution by the additions that have since been made.

Mr. President : The question is:

“That article 119 be renumbered as clause (1) of article 119, and to the said article as so renumbered the following clause be added:—

- ‘(2) The President may notwithstanding anything contained in clause (i) of the proviso to article 109 of this Constitution, refer a dispute of the kind mentioned in the said clause to the Supreme Court for opinion and the Supreme Court may’ after such hearing as it thinks fit, report to the President its opinion thereon.’”

The amendment was adopted.

Shri T. T. Krishnamachari : Sir, I move :

“That in clause (3) of article 135, for the words ‘shall have an official residence’ the words ‘shall be entitled without payment of rent to the use of his official residences’ be substituted.”

This refers to the Governor. The amendment to article 48 referred to the President and it has been accepted by the House.

Shri H. V. Kamath : In my humble judgment there is a little discrepancy here. We have provided rent-free residences to the President and the Judges of the Supreme Court at the Centre. Similarly, on the same reasoning, should we not provide rent-free residences to the Governor and the High Court Judges? Why do we provide it for the Governor only?

The Honourable Dr. B. R. Ambedkar : Logic cannot be employed to make a proposition absurd.

Mr. President : The question does not arise here. The question is:

“That in clause (3) of article 135, for the words ‘shall have an official residence’ the words ‘shall be entitled without payment of rent to the use of his official residences’ be substituted.”

The amendment was adopted.

Shri T. T. Krishnamachari : Mr. President, Sir, I move:

“That in clause (3) of article 135, for the words ‘the Legislature of the State the word ‘Parliament’ be substituted.”

The appointment of the Governor is now being made by the President. It is therefore felt that it would not be proper to leave his emoluments to be decided by the legislature of the State as it originally was when we had intended that the Governor should be elected. This should have been amended earlier, but we found that we could do it only at the last stage. Therefore, I am moving that the emoluments of the Governor shall be determined by Parliament by law.

Prof. Shibban Lal Saksena : I am glad that the change is being made. I would only like to know who will pay the salary of the Governor—will it come out of the provincial exchequer or the Central exchequer ?

Mr. President : It will be a charge on the provincial revenues.

The question is:

“That in clause (3) of article 135 for the words ‘Legislature of the State’ the word ‘Parliament’ be substituted.”

The amendment was adopted.

Shri T. T. Krishnamachari : Sir, I move:

“That clause (4) of article 144 be omitted.”

Sir, clause (4) is similar to article 62(5) (a) which has been omitted and the reason for moving this is that this House has decided that there should be no Fourth Schedule to this Constitution, and as this clause is entirely dependent on the fact that there should be such a Schedule, it is no longer necessary.

Mr. President : The question is:

“That clause (4) of article 144 be omitted.”

The amendment was adopted.

Shri T. T. Krishnamachari : Sir, I move:

“That clause (2) of article 149 be omitted.”

Clause (2) of article 149 is much the same as the previous article which the House has accepted, in regard to the House of the People. This clause (2) as it now stands provides for election on the basis of adult suffrage and so on and we find that this has been transposed. Now article 289-B deals with elections to Parliament and with elections to the Legislature of a State. Therefore this clause is not necessary.

Prof. Shibban Lal Saksena : I am not moving my typed amendment which reads:

“That amendment 369 of List IV (Second week) be deleted.”

Mr. Naziruddin Ahmad : Some of the Members including my humble self find it difficult to follow these changes of mind. When clause (2) of article 149 was there, then article-289-B should not have been passed : we should have passed immediately another amendment just to remove mere duplication. So far as the present amendments are concerned they have been circulated to us only today. The Members have had no time to consider them. The result of these hurried and rapid amendments might be that there might be other anomalies requiring further clarifications and corrections. It is difficult to follow them and the way we have been amending our old decisions on the ground of anomalies and duplications shows the danger of adopting them without real consideration.

Mr. President : I think all these articles were introduced under a separate part dealing with elections, and so it was considered necessary to remove all those which dealt with elections to this one place.

Mr. Naziruddin Ahmad : Why were they not thought of at the time of those amendments ?

Shri T. T. Krishnamachari : The explanation that the Chair has given is perfectly right. Actually we thought of a complete chapter and at the time that the chapter was introduced and accepted by the House we did not move for the deletion of this article because it was thought that it could be done

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at the end of debate in the Second Reading. We felt that various other things would arise and an amendment could be made to deal with these articles at the end. That is why we have brought it up now.

Mr. President : The question is:

“That clause (2) of article 149 be omitted.”

The amendment was adopted.

Shri T. T. Krishnamachari : Sir, I move:

“That in clause (4) of article 149 for the words ‘Legislature of the State’ the word ‘Parliament’ be substituted.”

The reason is this: that the powers that are given to the Legislature of a State under clause (2) have now been given under article 290 to Parliament. It was a question of delimitation of other things and therefore this alteration is necessary. I am sure that my honourable Friend, Mr. Naziruddin Ahmad, would not find fault with us for not having at that time moved for a deletion of these words in substitution for the word “Parliament” because we felt that we could do it later on and therefore we had left it out at that time. It was not that we were unaware of the fact that we were doing something contrary to clause (1) of article 149.

Shri H. V. Kamath : There is a little verbal slip committed by the Drafting Committee in this connection. The word “Parliament” ought to substitute the phrase “the Legislature of the State”; otherwise if the amendment is accepted as it is, the clause would read as follows:

“With effect from such date as the Parliament may by law determine.” ‘The Parliament’ is obviously incorrect.

Shri T. T. Krishnamachari : I am very grateful to my honourable Friend for drawing our attention to it. May I ask you to treat the amendment that has been moved by me as:

“the Legislature of the State?”

I am very grateful to my honourable Friend.

Shri H. V. Kamath : Why not treat it as your amendment further amended by me ?

Prof. Shibban Lal Saksena : This is an important amendment. Here it is said:

“Upon the completion of each census, the representation of the several territorial constituencies in the Legislative Assembly of each State 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 the Legislature of the State may by law determine”

The intention was that when the new census is completed and the constituencies have been readjusted, then the Legislature of the State shall be the proper authority to readjust them. Now the powers have been given to Parliament. I welcome this from the point of view that it shall be somewhat uniform. But I want to know what is the machinery by which this will be done because the population of a province may increase and how with the new Constituencies be readjusted ? I am sure every province would like to be heard before such readjustment and as such there should be some provisions by which Parliament, before making such an amendment, should be able to know the views of

the Legislature of the State concerned. Take my own province: the population is six crores and we may have 500 seats. But suppose the population, increases-then the constituencies may have to be changed. Or take another province where the population is small and it increases : will they be able to increase the constituencies according to the population ? We have to provide how the Legislature of a State can be heard before the Parliament takes its decisions.

Mr. Naziruddin Ahmad : I would submit only one word in reply to what has been said by Mr. T. T. Krishnamachari. For one of my remarks in the previous amendment, Mr. Krishnamachari says that I am finding fault with them. I am not really finding fault with him but I just explained my difficulty which is shared by a number of Members in the House. Mr.T.T. Krishnamachari is on the other hand finding fault with Members.

Shri T. T. Krishnamachari : Sir, if I caused any annoyance to my friend I would like to apologise. In regard to my honourable Friend Prof. Shibban Lal Saksena's remarks I would ask him once again to read article 290. So far as the machinery is concerned the intention was that the machinery should be created and probably would be created. But at the moment we cannot say anything more than what is said in article 290 read with clause (4) of article 149.

Mr. President : The question is:

"That in clause (4) of article 149 for the words 'the Legislature of the State' the word 'Parliament' be substituted."

The amendment was adopted.

Shri T. T. Krishnamachari : Sir, may I request you to hold over amendment No. 371 as it is analogous to amendment No. 364 regarding which you were good enough to accede to my request to hold it over till tomorrow. Sir, I move :

"That to article 230 the following words be added at the end:—

'or any decision made at any international conference, association or other body'."

I think my honourable Friend Mr. Kamath would certainly appreciate this amendment, particularly in view of the fact that he was so keen to elaborate the provisions of the relative entries in List I of Schedule VII. The article as amended would, read :

"Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for any State or part thereof for implementing any treaty, agreement of convention with any other country or countries or any decision made at any international conference, association or other body."

I think this makes it perfect and meets with all contingencies that might occur in which Parliament will have to make legislation for implementing international agreements and decisions of international conferences to which this country is or will be a party.

Shri H. V. Kamath : I am quite satisfied with the statement made by my Friend Mr. Krishnamachari.

Mr. President : The question is :

"That to article 230, the following words be added at the end:—

'or any decision made at any international conference, association or other body'."

The amendment was adopted.

Shri T. T. Krishnamachari : Sir, in respect to amendment No. 373, I would ask your permission to hold this over till tomorrow.

Shri R. K. Sidhwa : I can understand changing one's mind after some days but this was presented to the House yesterday and so soon the honourable Member has changed his mind.

Shri T. T. Krishnamachari : Sir, I move :

Mr. Naziruddin Ahmad : Sir, on a point of order, this is supposed to be a very important clause and it was circulated to us only this morning. We have many other things to do besides attending this House and we require time to consider the amendments. We cannot just now deal with them on the spur of the moment.

Mr. President : Very well, the amendment may be held over.

Shri T. T. Krishnamachari : Sir, I move:

“That sub-clause (c) of clause (1) of article 303 be omitted.”

Before I move article 303 I would like, Sir, to have your permission to move an item in clause 303(1) (b) which has been held over. Items (b) and (c) of clause (1) of article 303 were held over and my amendment No. 375 is to ask permission of the House to delete item (c). Item (b) will have to be moved and if you will give me permission I will move it. There is no amendment to this. It relates to the definition of Anglo-Indians. Sir, I move :

“That item (b) of clause 1 of article 303 as it originally stood in the Draft Constitution be adopted.”

Shri H. V. Kamath : Sir, what will happen to those persons whose progenitors in the male line were of Australian or American descent ? “Anglo” refers to England and not Europe. This is somewhat badly drafted. What about those of American, Australian or Canadian descent ? I do not know how this difficulty will be overcome.

Shri T. T. Krishnamachari : This is the definition of the Government of India Act and we have only borrowed it.

Shri H. V. Kamath : Can we not rectify a mistake in the Government of India Act ?

The Honourable Shri K. Santhanam : The words “European descent” will include persons of Australian and American descent also.

Shri H. V. Kamath : Sir, are you satisfied with this draft ? I wonder.

Mr. President : Do not put me personal questions. I am satisfied with whatever the House adopts. Item (b) of clause (1) of article 303 was held over on the 16th September

Mr. Naziruddin Ahmad : We are reminded of it only when the honourable Member read the revised draft form. It was not on the agenda. It shows gross carelessness.

Mr. President : Article 303 is on the agenda and no omissions or corrections in that article are now coming before us. I do not think it is any use holding over any further. I have looked over the amendments in the second printed list and I do not find any substantial amendment to this.

The question is :

“That item (b) of clause (1) of article 303 as it originally stood in the Draft Constitution be adopted.”

The motion was adopted.

Shri T. T. Krishnamachari : Sir, I move:

“That sub-clause (c) of clause (1) of article 303 be omitted.”

This refers to the Indian Christians and there is no reference in the Constitution to Indian Christian as such because the rights that were originally given to them have now been abrogated by the amendments that have been moved. Therefore, Sir, this definition is no longer necessary.

Mr. Naziruddin Ahmad : What is this amendment, Sir ?

Mr. President : The definition of the word ‘Christian’ that is given in clause (c) in article 303(1) is to be omitted, because the word ‘Christian’ does not occur anywhere in the constitution.

That is the amendment.

The question is:

“That sub-clause (c) of clause (1) of article 303 be omitted.”

The amendment was adopted.

Shri T. T. Krishnamachari : Mr. President, Sir, I move:—

“That for sub-clause (111) of clause (1) of article 303 the following sub-clause be substituted:—

‘(111) Indian State’ means any territory which the Government of the Dominion of India recognised as such a State’.”

The reference is to page 157 of the Draft Constitution and it has reference to an item that has already been passed. In the original as we have passed already this (111) is split up into two and deals with a definition as respects the period before the commencement of the Constitution and as respects the period after the commencement of the Constitution. That has now been found to be unnecessary and therefore, this definition has been substituted.

Shri H. V. Kamath : Sir, is it very necessary to say “the Government of the Dominion of India ?” Is it not enough to say “the Government of India?”

Mr. President : There is a confusion. The Government of India means also the Government of India under the new Constitution, but the Government of the Dominion of India means the Government which was in power before the commencement of the Constitution. I think it is to avoid that confusion that this amendment is brought in.

Mr. Naziruddin Ahmad : It seems to me, Sir, that the word ‘Dominion’ has been used in reference to the future.

The Honourable Shri K. Santhanam : I think that instead of the words “such a State” occurring at the end, the words “an Indian State” would be better.

Shri T. T. Krishnamachari : I am advised that if the amendment proposed by Mr. Santhanam is accepted the meaning will not be clear. The real fact is this that there is no need for the definition of an Indian State in so far as the

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Constitution after it comes into operation is concerned. It only has to refer to those States before the commencement of the Constitution. Therefore, it is not necessary to relate the 'Indian State' to the Constitution as such after it comes into operation and that is why we have shortened the definition that was originally accepted by the House into one, instead of two alternatives, and I am advised that the phrase "as such" exactly suits the purpose for which it is intended.

The Honourable Shri K. Santhanam : Even in the new Constitution the words 'Indian State' have occurred and will have to be interpreted for the purpose of assets and liabilities. Therefore, we have to say that 'Indian State' means any territory which was recognized as an 'Indian State' by the Dominion of India. This is purely a verbal-amendment.

Shri T. T. Krishnamachari : In the new Constitution wherever reference is made to an 'Indian State', it is made as a State and its relation to what existed previously is to the corresponding Indian State and the corresponding province. There is no place where the 'Indian State' occurs for the purpose of interpretation as things would exist after the Constitution comes into operation.

Mr. Naziruddin Ahmad : May I ask a question as to where in this Constitution the expression 'Indian States' have been used? We must have an idea of the context in which this term is used in order to define it.

Mr. President : Mr. T. T. Krishnamachari has just mentioned two instances.

Shri T. T. Krishnamachari : If my honourable Friend wants a ready reference, I would ask him to refer to article 273-A which has now been held over and to 267-A which has been passed. There are a number of other articles as well of this nature.

The Honourable Shri K. Santhanam : At least the article 'a' occurring in the words 'such a State' may be dropped.

Mr. President : Is there any harm in saying 'recognized as an Indian State'?

Shri T. T. Krishnamachari : That would not be correct, Sir. If we put the words 'Indian State', it must be as 'an Indian State', and it cannot be stated merely as 'Indian State'. Whether we retain the word 'State, or 'Indian State', the article will be necessary whether it is 'a' or 'an'. May I, Sir, read the definition in the Government of India Act?

"Indian State means any territory not being part of British India which His Majesty's Government recognized as being such a State, whether described as a State, an estate, jagir or otherwise."

Mr. President : I do not suppose there will be any difficulty about the meaning. It is question of English.

Shri T. T. Krishnamachari : We have more or less followed the precedent of the Government of India Act in these matters.

Mr. President : The question is:

"That for sub-clause (111) of clause (1) of article 303 the following sub-clause be substituted:—

'(111) 'Indian State' means any territory which the Government of the Dominion of India recognised as such a State'."

The amendment was adopted.

Shri T. T. Krishnamachari : Sir, I move:

“That for sub-clause (nn) of clause (1) of article 303, the following sub-clauses be substituted:—

‘(nn) ‘Rajpramukh’ means—

- (i) in relation to the State of Hyderabad, the person who for the time being is recognised by the President as the Nizam of Hyderabad;
- (ii) in relation to the State of Jammu and Kashmir or the State of Mysore, the person who for the time being is recognised by the President as the Maharaja of that State; and
- (iii) in relation to any other State for the time being specified in Part III of the First Schedule, the person who for the time being is recognised by the President as the Rajpramukh of that State,

and includes in relation to any of the said States any person for the time being recognised by the President as competent to exercise the powers of the Rajpramukh in relation to that State’.”

Sir, the original definition which this amendment seeks to replace referred only to Ruler, I propose to follow upto this amendment with a definition of ‘Ruler’, which is as follows

“(nn) ‘Ruler’ in relation to an Indian State means the Prince, Chief or other C” person by whom any such covenant or agreement as is referred to in clause (1) of Article 267A of this Constitution was entered into and who for the time being is recognised by the President as the Ruler of the State, and includes any person who for the time being is recognised by the President as the successor or such Ruler.”

As I said earlier, this splits up the original sub-clause (nn) in article 303 (1). It clearly states who is a Rajpramukh and in so referring to Rajpramukh, also permits the use of the word Nizam for the Ruler of Hyderabad and Maharaja for the Rulers of Jammu and Kashmir and Mysore. It also makes the distinction between Rajpramukh and Ruler clear, in that the Ruler will be a person who will not be a Rajpramukh, but will be a person who had entered into an agreement with the Government of India as is referred to in article 267-A, which was passed by the House yesterday even though he does not happen to have ruling powers. It has been provided that he must be a person who has been recognised by the President as a Ruler. Provision has also been made that the President should also recognise his successor as such Ruler.

Shri H. V. Kamath : Unfortunately, Sir, there are two lacunae in this amendment. It omits to define, firstly, Up-Rajpramukh and also Maharajpramukh. I am told that there is one person, the Maharana of Udaipur who is known as the Maharajpramukh. These are not defined in this amendment. These omissions must be filled before it can be good.

Mr. President : There is notice of an amendment bringing in the definition of Up-Rajpramukh. That is coming up later. The word Maharajpramukh has never been used.

An Honourable Member : He has no powers.

The Honourable Shri K. Santhanam : About the definition of Ruler, Sir, the last sentence says, “and includes any person who for the time being is recognised by the President as the successor of such Ruler.” If he is the successor of such Ruler, he will automatically be the Ruler. We cannot have a Ruler and a successor at the same time. I think the last portion would lead to confusion. It might suggest that at a time, there can be a Ruler and successor recognised for the same State. I think that is an impossibility. If he is the real successor, he becomes automatically the Ruler. At one time, there can be only one Ruler or successor. There cannot be both.

Shri T. T. Krishnamachari : The difficulty in my honourable Friend's Process of thinking is that there is no such thing as automatic succession. Succession has got to be recognised by the President.

The Honourable Shri K. Santhanam : What I meant is as soon as somebody is recognised as the successor, he will be the Ruler. Otherwise, there is no meaning in recognising a successor.

Shri T. T. Krishnamachari : There is a certain amount of confusion because we shall have Rulers without a State. Only the Rajpramukh is related to a State. The other Rulers will be more or less connected with the Estates that they held in the past. The idea really is that the person who succeeds to the estate must be recognised by the President. If he does not recognise him, he does not become the Ruler. There is nothing automatic about it. If the President recognises one person as a Ruler, until there is a vacancy, it is unlikely that he will recognise another as a successor. There must be a vacancy before the successor could be recognised. I see no difficulty in the wording as it is.

The Honourable Shri K. Santhanam : May I enquire whether a person who has lost his State by merger in a province continues to be a Ruler or he has become successor?

Shri T. T. Krishnamachari : The whole difficulty is, this is rather intricate. It is baffling. I admit that a person who has lost his State is nevertheless a Ruler, under the definition in (nn), and also for the purpose of Article 267- A.

The Honourable Shri K. Santhanam : Why not his son also be Ruler ?

Shri T. T. Krishnamachari : Might be.

The Honourable Dr. B. R. Ambedkar : If I may say so, this definition of Ruler is intended only for the limited purpose of making payments out of the privy purse. It has no other reference at all.

The Honourable Shri K. Santhanam : My point is whether it will be so construed as to mean two people at the same time entitled to the allowances. I want to ensure that at a time there will be only one person who will be entitled under the covenant to receive payment.

Mr. President : I think that is just secured by this, because the person recognised as, the Ruler alone will be entitled to the payment.

The Honourable Dr. B. R. Ambedkar : That would be governed by the provisions regarding recognition. I am sure the President is not going to recognise two or three or four persons. This expression is deliberately used in order to give the power to the President.

The Honourable Shri K. Santhanam : He might be called the Ruler or successor.

Mr. President : Mr. Santhanam, I think that is quite clear. The idea is to preserve those privileges which have been conferred on the Rulers to those who are recognised as their successors. That is to say, if a person is recognised as the Ruler, only that person who is recognised as his successor will inherit those privileges and not other successors.

I do not suppose any further discussion is necessary. I shall put it to vote.

The question is :

“That for sub-clause (nn) of clause (1) of article 303, the following sub-clauses be substituted:—

‘(nn) ‘Rajpramukh’ means—

- (i) in relation to the State of Hyderabad, the person who for the time being is recognised by the President as the Nizam of Hyderabad;

- (ii) in relation to the State of Jammu and Kashmir or the State of Mysore, the person who for the time being is recognised by the President as the Maharaja of that State; and
- (iii) in relation to any other State for the time being specified in Part III of the First Schedule, the person who for the time being is recognised by the President as the Rajpramukh of that State.

and includes in relation to any of the said States any person for the time being recognised by the President as competent to exercise the powers of the Rajpramukh in relation to that State;"

- (nnn) 'Ruler' in relation to an Indian State means the Prince, Chief or other person by whom any such covenant or agreement as is referred to in clause (1) of article 267A of this Constitution was entered into and who for the time being is recognised by the President as the Ruler of the State, and includes any person who for the time being is recognised by the President as the successor of such Ruler';".

The amendment was adopted.

Shri T. T. Krishnamachari : Mr. President, I move

"That for sub-clause (r) of clause (1) of article 303, the following sub-clause be substituted:—

'(r) 'railway' does not include—

- (a) a tramway wholly within a municipal area, or
- (b) any other line of communication wholly situate in one State and declared by Parliament by law not to be a railway'."

Sir, the original definition stood thus:

"A railway does not include a tramway whether wholly within a municipal area or not."

It has now been found that there are railways in certain States which are not railways in the sense that they are accepted to be railways, but they are something in between a railway and a tramway. The definition is so altered as to permit the Parliament by law to recognise what is not to be a railway. This has been necessary because since we framed the original definition, certain things have transpired, in that most of the Indian States have or are about to transfer their railways to the Government of India and the conditions existing in those States have to be taken into account and provided for. That is why this amendment is being introduced.

Shri R. K. Sidhwa : Sir, tramways are never known as railways. I think it is redundant to say tramway within a municipal area. A tramway is a tramway. Who has brought into the brain of the Drafting Committee that tramway is a railway ? It looks so awkward. I therefore feel, Sir, that subparagraph (a) is redundant.

The Honourable Shri K. Santhanam : I am afraid my honourable Friend is wrong. Even at the time when the original definition was under discussion, I pointed out that it was wrong to say that a railway does not include a tramway. Because mechanically, there is no difference whatsoever between a railway and a tramway, except it may be that the latter has only one carriage or two carriages. Therefore this amendment is necessary. Otherwise in many places, many lines may be called tramways and there may be disputes. We do not want to have any kind of dispute. Therefore, the present definition is the proper definition to be adopted.

Mr. Naziruddin Ahmad : With regard to paragraph (b) I have some difficulty. It was stated by Mr. Krishnamachari in this argument.....

Shri T. T. Krishnamachari : May I suggest to the honourable Member to accept the argument of the expert who spoke before me in support of this amendment and ignore anything that I said before.

Mr. Naziruddin Ahmad : It is now clear that Mr. T. T. Krishnamachari is merely a conduit pipe. After all, he has taken the responsibility of explaining the matter. He has explained that the word State really means an Indian State and does not mean a province. In the new state of affairs, a State also includes a province. What is meant probably is a State mentioned in Part III of the first schedule. If that is so, it should be specifically stated. Because otherwise if there are small railways in any Indian province in Part I, they would also be excluded. If it is the intention to exclude Indian States on the ground that they have not come to terms up to this time, we should specifically state that.

Shri T. T. Krishnamachari : Right through the Constitution we have used only one word 'State'. Where we wanted to differentiate, we have mentioned them as States in Part I or Part II and so on. So I fail to see the force of Mr. Naziruddin Ahmad's speech.

Mr. President : Mr. Krishnamachari did not base his argument on the use of the word State. He did not say that either.

Mr. Naziruddin Ahmad : During the argument he mentioned the case of an Indian State. That had misled me.

Mr. President : The question is :

“That for sub-clause (r) of clause (1) of article 303, the following sub-clause be substituted:—

(r) 'railway' does not include—

- (a) a tramway wholly within a municipal area, or
- (b) any other line of communication wholly situate in one State and declared by Parliament by law not to be a railway'.”

The amendment was adopted.

Shri. T. T. Krishnamachari : May I request you to permit me to move an amendment which has been tabled and has just been circulated. It has not been numbered and it refers to Up-rajpramukh. I move:—

“That to clause (1) of article 303, the following sub-clause be added :

(y) 'Up-rajpramukh' in relation to any State means the person who for the time being is recognised by the President as the Up-rajpramukh of that State'.”

Sir, I am indebted to my honourable Friend the Prime Minister of Mysore for drawing my attention to this defect.

As regards the question raised by Mr. Kamath about Maharajpramukh, I would only like to say that there is no mention in this Constitution of Maharajpramukh although one such person exists. We have not constitutionally recognised the existence of such a person. This definition arises out of the fact that we had to make mention of the name Up-rajpramukh in two places in the amendments that were moved yesterday in regard to removal of disqualifications for office. I hope the House will accept my amendment.

Shri. H. V. Kamath : There is some little difficulty in this connection. In accordance with the Sanskrit and Hindi philology as well as etymology, the

proper spelling should be Up-rajpramukh; otherwise I have heard British and other foreign journalists pronouncing it as Aprajpramukh.

Mr. President : The spelling will be corrected but I do not think that will prevent the ignorant people from mispronouncing it.

Shri Jainarain Vyas (United State of Rajasthan): Sir, I do not agree with the position of Maharajpramukh. He presides over the meetings of the Princes and if he is not recognised as the Constitutional Maharajpramukh, then all the meetings over which he presides will be null and void.

Mr. President : Is there anything like the meeting of the Princes as it used to be of the Chamber of Princes ?

Shri Gokulbhai Daulatram Bhatt (Bombay States) : *[Sir, there is an article in the Covenant of Rajasthan which says: "If any meeting of the princes is held, it would be presided over by the Maharana of Udaipur as Maharajpramukh, if he be present in the meeting." It has been clearly mentioned therein. It is plain that this implies a question of his dignity. No other administrative power has been vested in him. But to that extent it is there and it deserves consideration. Hence it should be reconsidered.]

Shri T. T. Krishnamachari : We have not put in any provision of that nature in Part VI A.

Mr. President : Is there any provision for a meeting of the Princes in our Constitution ?

Shri Gokulbhai Daulatram Bhatt : Meeting of the Princes of the States that have been merged to form the Rajasthan Union is at present provided for.

An Honourable Member : There is a provision in the Covenant.

Mr. President : Not in the Constitution.

Shri Gokulbhai Daulatram Bhatt : The terms Rajpramukh and Uprajpramukh are there in the Covenant.

Mr. Naziruddin Ahmad : Covenants are part of the Constitution. They have joined as under the covenants. So we should recognise them. This requires careful consideration.

Shri H. J. Khandekar (C. P. & Berar : General) : I think this would be held over.

The Honourable Shri K. Santhanam : Here it is only the question of definition. We do not want a definition unless it is to be used in the Constitution.

Shri T. T. Krishnamachari : Sir, this will have to be accepted because an amendment in which this word occurs has already been accepted. If it is a definition of a term which has not found a place in the Constitution, that is a different matter, but my friend's contention is not a bar to the acceptance of this amendment.

Mr. President : So there is no question about Up-rajpramukh. We leave the question of Maharajpramukh for future consideration.

Shri Gokulbhai Daulatram Bhatt : I would like it to be made clear lest it may be held that, just as Rajpramukh and Up-rajpramukh are mentioned, so also he should have been specifically mentioned.

*[] Translation of Hindustani speech.

Mr. President : In our Constitution we have only used the term Uprajpramukh. The qualifying word may not create any difficulty.

Shri T. T. Krishnamachari : I have been informed that the allowance of the Mahrajpramukh of Udaipur is not as Maharajpramukh but as a Ruler who gets his privy purse under articles 267-A and therefore there is no need for a special title to be mentioned in the Constitution.

Mr. President : I am putting this to vote now.

Shri H. J. Khandekar : What will be the position if the Up-rajpramukh is a lady? What will be the name ?

Mr. President : In that way we have got women Chairman of Committees. That does not create any difficulty so far as English is concerned.

The question is :

“That to clause (1) of article 303, the following sub-clause be added:—

‘(y) ‘Up-rajpramukh’ in relation to any State means the person who for the time being is recognised by the President as the Up-rajpramukh of that state.’”

The amendment was adopted.

Mr. President : We then go to the Schedule.

Shri Yudhishtir Mishra (Orissa States) : Sir, I suggest that the consideration of the First Schedule may please be held over for tomorrow.

Shri Brajeshwar Prasad : Yes, Sir. It may be held over. We got the list at 8 o'clock this morning only.

Mr. President : It may be moved, and we will take up the amendments tomorrow morning.

FIRST SCHEDULE

The Honourable Dr. B. R. Ambedkar : Sir, I move

“That for the First Schedule the following be substituted:—

“FIRST SCHEDULE

(Articles 1 and 4)

The States and the territories of India

PART I.

Name of States.	Names of corresponding Provinces.
1. Assam	Assam
2. Bengal	West Bengal
3. Bihar	Bihar
4. Bombay	Bombay
5. Koshal-Vidarbh	Central Provinces and Berar
6. Madras	Madras
7. Orissa	Orissa
8. Punjab	East Punjab
9. United Provinces.	United Provinces.

Territories of States

The territory of the State of Assam shall comprise the territories which immediately before the commencement of this Constitution were comprised in the Province of Assam, and Khasi States and the Assam Tribal Areas.

The territory of the State of Bengal shall comprise the territory which immediately before the commencement of this Constitution was comprised in the Province of West Bengal.”

Shri B. Das (Orissa : General) : We wanted utkal to be the name of ORISSA.

The Honourable Dr. B. R. Ambedkar : You may move an amendment.

“The territory of the State of Bombay shall comprise the territory which immediately before the commencement of this Constitution was comprised in the Province of Bombay and the territories which by virtue of an order made under section 290A of the Government of India Act, 1935, were immediately before such commencement being administered as if they formed part of that Province or which immediately before such commencement were being administered by the Government of that Province under the provisions of the Extra-Provincial Jurisdiction Act, 1947.

The territory of each of the other States shall comprise the territories which immediately before the commencement of this Constitution were comprised in the corresponding Province and the territories which, by virtue of an order made under section 290A of the Government of India Act, 1935, were immediately before such commencement being administered as if they formed part of that Province.

PART II.

Names of States.

1. Ajmer
2. Bhopal
3. Bilaspur
4. Coorg
5. Cooch-Behar
6. Delhi
7. Himachal Pradesh
8. Kutch
9. Manipur
10. Rampur
11. Tripura

Territories of States

The territory of the State of Ajmer shall comprise the territories which immediately before the commencement of this Constitution were comprised in the Chief Commissioner's Provinces of Ajmer-Merwara and Panth Piploda.

The territory of each of the States of Coorg and Delhi shall comprise the territory which immediately before the commencement of this Constitution was comprised in The Chief Commissioner's Province of the same name.

The territory of each of the other States shall comprise the territories which, by virtue of an order made under section 290A of the Government of India Act, 1935, were immediately, before the commencement of this Constitution administered as if they were Chief Commissioner's Province of the same name.

PART III.

Names of States.

1. Hyderabad
2. Jammu and Kashmir
3. Madhya Bharat
4. Mysore
5. Patiala & East Punjab States Union
6. Rajasthan
7. Saurashtra
8. Travancore-Cochin
9. Vindhya Pradesh

Territories of States

The territory of the State of Rajasthan shall comprise the territories which immediately before the commencement of this Constitution were comprised in the United State of Rajasthan and the territories which immediately before such commencement were being administered by the Government of that State under the provisions of the Extra-Provincial Jurisdiction Act, 1947.

The territory of the State of Saurashtra shall comprise the territories which immediately before the commencement of this Constitution were comprised in the United States of Kathiawar (Saurashtra) and the territories which immediately before such commencement were being administered by the Government of that State under the provisions of the Extra-Provincial Jurisdiction Act, 1947.

[The Honourable Dr. B. R. Ambedkar]

The territory of each of the other States shall comprise the territory which immediately before the commencement of this Constitution was comprised in the corresponding Indian state.

PART IV.

The Andaman and Nicobar Islands.”

Sir, I do not think the amendment which I have moved calls for any explanation.

Shri Jainarain Vyas : I would like to know if Sirohi State has been put in anywhere.

The Honourable Dr. B. R. Ambedkar : Sirohi, I understand is administered under the Extra-Provincial Jurisdiction Act, 1947, partly by Bombay and partly by Rajasthan. That is the reason why it has not been separately mentioned.

Shri Jainarain Vyas : But it is neither in Bombay, nor in Rajasthan at the moment.

Mr. Naziruddin Ahmad : I have one or two suggestions to make. With regard to the expression “under section 290-A of the Government of India Act, 1935”. I submit an explanation should be added to say that it is the Act, as adapted. And the second suggestion is that in Part II, the names are arranged in the alphabetical order, but I find items 4 and 5 are in an irregular order, and item 4 should come after item 5. That will make it absolutely alphabetical.

Mr. President : You mean Coorg and Cooch-Bihar, yes, I think so.

Shri T. T. Krishnamachari : So far as the first point raised by Mr. Naziruddin Ahmad is concerned, I may point out that it was stated on a previous occasion that the short title of the Government of India Act as adapted, is the Government of India Act, 1935.

Mr. President : I think we shall rise now. We shall meet again at ten o'clock tomorrow morning when the amendments will be taken up.

Shri R. K. Sidhwa : Is the Preamble also to be taken up tomorrow ?

Mr. President : Yes, if possible, we shall try to finish it.

Shri R. K. Sidhwa : Is there any further article or amendment coming up ?

Mr. President : There are one or two articles we have left over.

Seth Govind Das (C.P. & Berar : General): Will the Preamble be the last thing to be considered ?

Mr. President : Yes, that is the usual thing, I suppose. There is another article 264-A on the agenda which has not been reached.

Shri R. K. Sidhwa : Sir, everyday new articles are brought in and new amendments and we send in our amendments, but as the original amendments are not moved, our amendments also are not to be moved and they are stopped.

Mr. President : I have never stopped amendments in that way. So far as technical difficulties are concerned, I have never allowed them to come in the way of any amendment.

The House now stand adjourned to ten o'clock tomorrow morning.

The Assembly then adjourned till ten of the clock on Saturday the 15th October, 1949.

CONSTITUENT ASSEMBLY OF INDIA

Saturday, the 15th October 1949

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.

An Honourable Member : May I know when this session is expected to break?

Mr. President : I think there is at least work for one day more and so we shall have to sit on Monday or Sunday. We shall at the end of the day decide on which day the House should sit. All that I can now say is that we shall have to sit for one day more, It may be tomorrow or the day after just as the House likes.

Seth Govind Das (C.P. & Berar: General): I propose that we sit tomorrow and not on Monday.

Mr. President : I shall ascertain the wishes of the Members.

Shrimati Annie Mascarene (United State of Travancore & Cochin): We Christians desire to have Sunday free.

Mr. President : There is objection on the part of Christian Members to sitting on Sunday.

Honourable Members : We did sit on a Sunday once.

Mr. President : But that does not take away the right of Christian members to object to sitting on Sundays. I shall consult the wishes of the House at the end of the day in this matter.

Shri K. M. Munshi (Bombay: General): Sir, with regard to the First Schedule may I submit.....

Mr. President : First we shall dispose of the motion for the substitution of rule 38-R standing in the name of Shrimati G. Durgabai.

CONSTITUENT ASSEMBLY RULES (AMENDMENT)

New Rules 38-R and 38-RR

Shrimati G. Durgabai (Madras: General): Mr. President, Sir, I move:

“That for rule 38-R of the Constituent Assembly Rules, the following rules be substituted:—

‘38 R. (1) When a motion that the Constitution be taken into consideration has been carried and the amendments to the Constitution moved have been considered, the President shall refer the Constitution as amended to the Drafting Committee referred to in sub-rule (1) of rule 38-L with instructions to carry out such re-numbering of the clauses, such revision of punctuation and such revision and completion of the marginal notes thereof as may be necessary, and to recommend such formal or consequential or other necessary amendments to the Constitution as may be required.

Revision of the Constitution by the Drafting Committee and the consideration of the amendment recommended by them.

(2) After the Constitution has been referred to the Drafting Committee, the report of the Committee shall be presented to the Assembly by the Chairman or any other member of the Drafting Committee and thereafter the Chairman or other member of the Committee may move that the amendments recommended by the Committee in the Constitution so referred to them be taken into consideration :

Provided that no such motion shall be made until after the report of the Drafting Committee together with the copies of the Constitution as revised by them has

[Shrimati G. Durgabai]

been made available for the use of members and that any member may object to any such motion being made unless the report and the copies of the Constitution as so revised have been made available three clear days before the date on which the motion is made, and such objection shall prevail unless the President in his discretion allows the motion to be made.

- (3) While making any motion referred to in sub-rule (2), the mover shall confine himself to an explanatory statement and at this stage there shall be no debate, and the President may, after such statement has been made, put the question.
- (4) After the motion referred to in sub-rule (2) has been carried, any member may move an amendment which is either formal or consequential upon an amendment recommended in any provision of the Constitution by the Drafting Committee after the Constitution was referred to them under sub-rule (1) but shall not be allowed to move any other amendment.
- (5) If notice of a proposed amendment has not been given two clear days before the day on which the motion referred to in sub-rule (2) is to be taken up for consideration, 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.
- (6) Notwithstanding anything in these rules, all the amendments recommended by the Drafting Committee, after the Constitution was referred to them under sub-rule (1), shall be deemed to have been moved, and it shall not be necessary for the President to put each of those amendments separately to vote.
- (7) The provisions of sub-rules (2) and (3) of rule 38-P shall apply to every amendment of which notice has been given under sub-rule (5), and notwithstanding anything in these rules it shall be in the discretion of the President to disallow any amendment of which notice has been so given.
- (8) The President shall allot not more than two days for the consideration by the Assembly of all amendments after the motion referred to in sub-rule (2) has been carried and shall, at the time appointed by him for the close of the sitting of the Assembly on the last of the allotted days, forthwith put every question necessary to dispose of all the outstanding matters in connection with those amendments, and in the case of amendments recommended by the Drafting Committee as such, he shall put only the question that the amendments so recommended be made or that the amendments so recommended as modified by any amendment or amendments adopted by the Assembly be made, as the case may be.
- (9) For the purpose of bringing to a conclusion any proceedings relating to such amendments on the last of the allotted days, the President shall have power to select the amendments to be proposed."

Sir, with your permission, I will move 38-RR also.

" 38-RR. (1) When the amendments to the Constitution referred to the Drafting Committee under sub-rule (1) of rule 38-R have been considered, any member may move that the Constitution as settled by the Assembly be passed, and to a motion so made no further amendment shall be allowed to be moved.

(2) The President may fix a time-limit for speeches during the debate on, I motion made under sub-rule (1).

(3) The President may in relation to any proceedings in connection with the passing of the Constitution under rule 38 R or this rule relax or suspend any of these rules."

Mr. President : Sir, honourable Members are aware that we have happily come to a stage when we have very nearly completed the Second Reading of this Draft Constitution. Now, we will be soon passing to the stage when we have got to take up the Draft Constitution for the Third Reading, and it will be in all probability in the coming month. Therefore the necessity arises for laying down a procedure for completing the Third Reading of the Draft Constitution and passing the Constitution.

Sir, the main features of these rules, I expect Members would have noted, are that the procedure laid down in these rules enables the drafting Committee to make formal or consequential or necessary amendments to the draft at the time of the Third Reading. Another main feature of

these rules is that it would enable the Members of the House to make only formal or consequential amendment to the amendments proposed by the Drafting Committee at the Third Reading stage. Sir, it also gives powers to the President to allow any amendment at his discretion and also to fix a time limit for speeches and some such other powers,

Sir, I have seen a number of amendments, about fifteen to twenty, given notice of by honourable Members of this House. Sir, some of those amendments, when they will be moved, I would deal with them, but the object of those amendments is for the deletion of the clause which would enable the President to fix a time limit for speeches and also to waive the notice of two days and to substitute instead seven days or five days' notice. Sir, we are all aware that we have taken two full years and ten months to make this Constitution. We All know that it has been a great strain on the financial resources of this India and therefore we should not allow any more time to be taken in either making speeches or delaying the passing of this Constitution. With this object of expediting the passing of the Constitution, these rules have enabled the President to take certain powers.

Therefore, Sir, I would appeal to the Members to withdraw their amendments or not to press them, and allow the smooth working of our passing this Constitution. With these observations, I would commend my motion for the acceptance of this House. Sir, I move.

Mr. President : There are several amendments to this. Mr. Naziruddin Ahmed.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, I have unfortunately some amendments to propose to these rules. I tried much to reduce the number of my amendments, but I failed to find any way of doing it. Sir, I beg to move:

“That in the proposed new Rules 38 R and 38 RR for the word Constitution wherever it occurs, the words ‘Draft Constitution’ be substituted.”

This is merely formal. I also move:—

“That in sub-rule (1) of the proposed rule 38 R,—

- (i) for the words ‘considered’ the words ‘considered and disposed of’ be substituted,-
- (ii) for the word ‘amended’ the words ‘amended by the Assembly’ be substituted;
- (iii) for the word ‘clauses’ the words ‘articles, clauses and sub-clauses’ be substituted; and
- (iv) for the words ‘to recommend’ the words ‘to submit a report recommending’ be substituted.”

“That after sub-rule (1) of the proposed rule 38 R, the following new sub-rule be inserted:—

‘(1a) The Draft Constitution as revised by the Drafting Committee under sub-rule (1). shall indicate by suitable typographical arrangements the changes and omissions made by the Committed.’”

“That in sub-rule (2) of the proposed rule 38 R, for the words ‘After the Constitution has been referred to the Drafting Committee the report of the Committee’ the words ‘The report of the Drafting Committee’ be substituted”

“That in sub-rule (2) of the proposed rule 38 R for the words in the Constitution’ the words ‘to the Constitution’ be substituted”

“That in the proviso to sub-rule (2) of the proposed rule 38 R, for the words ‘three days’ the words ‘seven clear days’ be substitute.”

Sir, I would like to explain the object of my amendments. The first amendment, as I have already submitted, is merely formal. I think it should be accepted on drafting grounds.

With regard to the other amendments, the difficulty is that the official amendments were given to us yesterday. and our amendments had to be handed

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over to the Office before 5 o'clock yesterday and they have been printed and circulated only this morning. I do not therefore think that either the members of the Drafting Committee or the honourable the Lady Member who has proposed these Rules had any real time to go through these amendments and see the object of them. However, I shall do my best to draw their attention to certain aspects of my amendments.

With regard to amendment No. 2, the purpose of the first part of it is to insert the words "and disposed of" after the word "considered". The passage, with my amendment, will read thus:—

“. the amendments to the Constitution moved have been considered and disposed of.”

In fact, we are concerned in sub-rule (1) with a stage when the amendments during the Second Reading have not only been considered but actually disposed of. Only after they are disposed of, the draft Constitution goes back to the Drafting Committee. So, this amendment is necessary.

The next amendment is to the effect that after the word "amended" the words "by the Assembly" be inserted. There are two authorities here between which there may be a confusion. The amendments made by the House and the amendments suggested by the Drafting Committee afterwards should be distinguished and that is the object of inserting these words so as to make the text read—

“. the Constitution as amended *by the Assembly*”

in order to distinguish it from the amendments suggested by the Drafting Committee.

A little later on we are going to authorise the Drafting Committee to renumber the "clauses". I submit that the word "clauses," although it appears in the old Rule, would be inapplicable to this Constitution. We have not been describing our articles as clauses but we have been describing them as articles. The expression "clauses", so far as we have been using it, means clauses to the articles. But here the word "clauses" apparently refers to the articles. So I have suggested this amendment so as to make the text read:

“. re-numbering of the articles, clauses and sub-clauses.”

That would be grammatical and legally more accurate.

The next amendment—the fourth part of the second amendment—is to insert the words "to submit a report recommending," instead of the words "to recommended". This amendment is very necessary because we have used the word "report" at two places in sub-rule (2). That report is the final report to be made by the Drafting Committee but we have not provision in sub-rule (1) for the submission of any report. We have merely said :

“. to recommend such formal or consequential or other necessary amendments”

I want to re-word it so as to read :

“. *to submit a report recommending* such formal or consequential or other necessary amendments”.

In fact the word "report" must occur here in order to give the full import of the word "report" in two places in sub-rule (2).

Then, Sir, my next amendment is for the insertion of another sub-rule 1(a) to the effect that:

“The Draft Constitution as revised by the Drafting Committee under sub-rule (1), shall indicate by suitable typographical arrangements the changes and omissions made by the Committees.”

This seems to be very necessary. We are after all to consider the draft Constitution as revised by the Drafting Committee and then to suggest our own

amendments. In order to make up our minds as to what amendments are to be made, we should really know what amendments have actually been suggested by the Drafting Committee. We are familiar with the practice of the Drafting Committee in this House that instead of indicating the actual amendments to the draft Constitution they have been giving us entirely re-written text of article and it has been extremely difficult for Members to follow what exact changes are introduced. That involves the Members individually into an unnecessarily laborious and meticulous comparison of the articles proposed in the House with the articles in the draft Constitution. Therefore, it seems to me that the draft Constitution as prepared finally by the Drafting Committee should indicate the exact changes so as to enable the Members to reivet their attention on those changes and to suggest consequential or formal amendments, if any, thereto. It would make their task easier. It would be very easy to arrange it, namely the changes to be shown by' italics or by underlining-side-lining may not be helpful. An omission may be shown by asterisks. These things, will be very simple and will be very useful to Members who may easily see the changes and then submit amendments.

With regard to clause (2), the opening words seem to be absolutely unnecessary and also to a certain extent misleading. It says :

“ . . . After the Constitution has been referred to the Drafting Committee, the report of the Committee shall be presented to the Assembly.”

An important step is omitted here—after the Constitution has been referred to the Drafting Committee there is a report of the Drafting Committee. So we should make it clear that after the report of the Drafting Committee is received the report of the Committee should be presented to the Assembly. Therefore I have suggested the omission of the opening words. Then sub-rule (2) would read like this : “The report of the Drafting Committee shall be presented to the Assembly “ and so forth. I have already suggested that the word ‘report’ should be incorporated in sub-rule (1) in my amendment No.2 Part (iv).

Then, Sir, I come to the proviso. Here I have a serious complaint to make that the proviso attempts to provide that the Draft constitution as revised by the Drafting committee will be made available to the Members within three clear days’ before the date when the Constitution will be taken up for consideration. Sir, I feel that it will be utterly impracticable for any honourable Member to read the revised Draft Constitution and submit amendments within the extremely short time available. You will be pleased to consider, Sir, that only three clear days have been given within which the Draft Constitution will be made available to the Members, while sub-rule (5) provides that two clear days’ notice should be given for our amendments.

Supposing we begin the consideration, of the Constitution on the 14th of November. The Draft Constitution must be made available on the 10th of November with three clear days notice and we have to submit our amendments on the 11th of November, giving a margin of two clear days. It will thus be clear that we will have only one clear day to read the report prepare amendments and send the same to the Notice Office in course of a single day. This will lead to so many practical absurdities that I submit that this rule in this form cannot be accepted. You will be pleased to consider that for us to attend the Assembly on the 14th, we have to leave our places on the 10th of November and on the 10th of November it is proposed to circulate the Draft Constitution as redrafted by the Drafting Committee. On the 10th of November we will all be on our journey by rail, road or air towards New Delhi. I fail to see how on the 10th of November the copy of the Draft Constitution

[Mr. Naziruddin Ahmad]

as revised, will reach us. If they are sent to our home address, we would have left our home by that time and the Members and the revised Draft Constitution will cross each other. If it is to be delivered at our Delhi address on the 10th or 11th, it will be too late for us to prepare amendments and hand them over to the Notice Office with two clear days' notice to office to consider them.

While I sympathise with the Drafting Committee for the high pressure at which they are working, I must at the same time point out that there is a feeling in this House that the Committee is behind time table—hopelessly behind time table from beginning to end. All this congestion of work is due to frequent changes of mind by the Drafting Committee who may certainly have their own reasons to justify the delay. But I wish so submit that the victim of an these unfortunate circumstances should not be the Members. How, I ask the House and particularly you, Sir, is a member to receive copy of the finalised draft on the 10th and to submit their amendments on the 11th? I therefore suggest that seven days' time be given to us to study the revised Constitution and submit amendments. May I further suggest that along with the final draft of the constitution, we may beforehand be given a comparative list of amendments proposed to each article so that we can study them and get ready to consider them.

I also suggest that before the Draft Constitution is sent to the press, a cyclostyled copy may be prepared and sent to those Members who are anxious to have it. I believe there would be only half a dozen Members who would be interested in it. But I do not mean to say that the privilege need be confined only to those members only. The cyclostyled copies may be sent to all those Members who ask for it. If that is done, I think we can work according to schedule. Otherwise, it will be extremely difficult for Members to get ready and submit amendments within time. In fact, it seems to me absolutely impracticable to do all this within the scheduled time. The main question would be the place and time of delivery of the finalised Constitution, in order to enable Members to play their part in time. I submit that these things should be taken into consideration while accepting these rules.

A further difficulty has been placed by the Drafting Committee on the Members in that they have selected a lady Member to propose all these difficult rules.

Shri H. V. Kamath (C. P. & Berar: General): How is it relevant, Sir?

Mr. President : She was not particularly selected; she herself wanted to move them.

Mr. Naziruddin Ahmad : The difficulty is that we cannot be hard upon her. After all some kind of gracefulness is necessary in dealing with a lady Member. The fact is that the Drafting Committee have put forward a lady to fight their cause.

Shrimati G. Durgabai : The honourable Member should note that I have moved the motion on my own accord.

Mr. Naziruddin Ahmad : I am not prepared to enter into a controversy with the honourable Mover. The amendments are for the benefit of the Drafting Committee. The method followed by the Drafting Committee is like that of the Communists who fight with ladies at the front, so as to make it impossible for the other party to strike.

Shri H. V. Kamath: Mr. President, Sir, I am at one with my honourable Friend Shrimati Durgabai that the passage of this Constitution should be expedited. But I would like to join issue with her on one point and that is this.

She stated that this constitution-making has been a huge drain upon our financial resources. I know we have spent some money. The House will remember that the Legislative Assembly in 1946 or early in 1947 budgeted one crore of rupees for the Constituent Assembly. Some time during the last session it was suggested in this House or outside that over two crores of rupees had been spent. After I heard this statement, I worked out the figures myself and came to the conclusion that only about sixty to seventy lakhs had been spent so far by this Assembly in constitution-making. I am not referring to the legislative work at all. If you include the sessions of the Legislative Assembly as well then perhaps we have spent more; but that is not part of the budgeted amount for constitution-making; and it is wrong in my humble judgement to lay the blame at the door of the Members of this House, even if a large amount has been spent.

The House will recollect that during the two years from January 1947 to October 1948 this House met only for 35 or 40 days at the most. For some reason or other the Drafting Committee was not ready, and we could not meet at all for more than 40 days in 22 months; if we had worked longer and met at more frequent intervals, we could have seen the Constitution through much earlier. Any way, even today the way expedite the Constitution is not to apply the axe ruthlessly to debates in the House, but to apply it reasonably. The way is to work longer hours, if necessary. We have realised this only too late in the day. Had we worked longer hours in 1947 or 1948, we would by now have seen this Constitution through. I have always favoured a night session; if we work morning, noon and night, I am sure we can finish it in another week or so. It is too late to make this suggestion at the fag-end of the Constitution, when a few more days remain for the Third Reading. I wanted to suggest to my honourable Friend Shrimati Durgabai it was wrong on her part to suggest that this House has been guilty of a huge drain upon our financial resources. This House has not been guilty of it: there are various reasons and circumstances which conspired to bring about this financial expenditure. I would not call it a huge drain at all; we have not exceeded the budgeted amount for Constitution making.

Sir, now I come to the amendments that stand in my name. I have, Sir, six amendments to my credit. Sir, I move :

“That is sub-rule (4) of the proposed rule 38-R, for the words ‘which is either formal or consequential upon the word ‘to’ be substituted.”

If this amendment were accepted by the House, it would read as follows:

“After the motion referred to in sub-rule (2) has been carried, any member may move an amendment to an amendment recommended in any provision of the Constitution by the Drafting Committee after the Constitution was referred to them under sub-rule (1) but shall not be allowed to move any other amendment.”

The point in this amendment is this, that according to the scheme which has been presented to the House by Shrimati Durgabai, the Drafting Committee will take care of the Constitution after the Second Reading and will come before the House for the Third Reading, whenever it may be. I suppose three days is the minimum period so far as the interval between the time when the Draft Constitution would reach the Members and this motion here for the Third Reading is concerned. The Drafting Committee, I freely admit are a team of wisemen, experts in their own field and very knowledgeable experts at that, but certainly the House will agree that they are not able, and even they either due to want of time or pressure of other work, even they might overlook certain matters or certain clauses or articles in the Constitution. Therefore certain omissions may remain to be filled, and certain lacunae may remain to be made good; and if Members who concentrate on a particular chapter of the Constitution, if they after a very careful reading of the particular chapter or

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sub-chapter have discovered some defect, some lacuna, some omission, is it not fair to give an opportunity to them to suggest or modify an amendment, whatever it may be, in the House ?

It may be argued by my honourable Friend Shrimati Durgabai that those Members are at liberty to contact the Drafting Committee before the latter brings up those amendments in the House for the Third Reading, but suppose they are not able to, suppose they arrive the previous day or in the morning of the day when the Constitution comes up in the Assembly for the Third Reading and they have no time to contact the Drafting Committee and to explain their point of view; it is no use sending it by post because one cannot always explain one's point of view on paper, unless one discusses the matter with the Drafting Committee personally. Supposing they were not able to do so, is their case to go by default ? That is why, Sir, I have moved this amendment before the House so as to afford an opportunity to Members who may have discovered, after a careful study, any errors or omissions in any part of the Constitution; and they must be at liberty to move their amendments in the House. You are always here, Sir, to disallow any vexatious or unnecessary amendment, and the House has got the fullest confidence in your judgment and if any Member tries to move an amendment which is not necessary, which is irrelevant, vexatious or frivolous, the Member will as the House knows, always abide by your ruling. There is no point in encroaching upon your rights, your prerogatives, your privileges or your powers. You, Sir, can always disallow any amendment in your discretion and in your judgment. Therefore, there is no need, no necessity for this sub-rule (4) to Rule 38-R.

The next amendment of mine is 8 in this list : I move:

“That in sub-rule (6) of the proposed rule 38-R the words ‘and it shall not be necessary, for the President to put each of those amendments separately to vote’ be deleted.”

This arises directly out of the amendment I have just now moved. The sub-rule, as moved by Shrimati Durgabai, provides that all the amendments moved by the Drafting Committee can be put before the House en bloc all together to the vote. Now, Sir, if as I have suggested in my first amendment Members are given the right to move their amendments and in the light of that amendment the House decides that a particular amendment recommended by the Drafting Committee must be modified, then a difficulty will arise: all the amendments, if they are not amended by the House, can be put *en bloc.*, or *en masse* to the vote of the House. But suppose, certain amendments have been modified by the House. How is it possible, then, not to put them separately ? Some of the amendments might have been modified in the light of amendments moved by honourable Members and accepted by the House.

Shri T. T. Krishnamachari (Madras : General): May I explain the procedure to my honourable Friend ? The procedure will be like this: in the same way as a Select Committee's report is taken into consideration by the House. The report of the Select Committee will be kept intact and treated as a whole. If Members move an amendment and that amendment is carried, then that amendment will be incorporated. Otherwise, the Select Committee's report goes through intact. The procedure envisaged here is the same.

Shri H. V. Kamath: I fear this sub-rule does not provide for that contingency. If I have understood the sub-rule allright, it does not provide for that contingency which might arise out of Honourable Members' amendments being accepted by the House and in the light of that, the Drafting Committee's amendments being modified. Sub-rule (6) says that all the amendments recommended by the Drafting Committee shall be deemed to have been moved,

and it shall not be necessary for the President to put each of those amendments separately to vote. I do not know if my honourable Friend was in the House when I moved my first amendment and explained my point of view before the House. I therein suggested that every Members must be given the right to move amendments of whatever nature, consequential or formal or otherwise necessary to any of the recommendations of the Drafting Committee and if the Drafting Committee's amendments are modified in the light of the acceptance of honourable Members' amendments, then it will be impossible to put the Drafting Committee's amendments *en masse* or *en bloc* to vote. They will have to be taken up group by group, and certain amendments will have to be put separately to the vote those which have been modified by the House. That is the purport of amendment No. 8.

Coming to amendment No. 9. it reads as follows:

“That in sub-rule (8) of the proposed rule 38 R, the words ‘shall allot not more than two days for the consideration by the Assembly of all amendments after the motion referred to in sub-rule (2) has been carried and’ be deleted.”

If this amendment were accepted by the House, this sub-rule will read as follows:

“The President shall, at the time appointed by him for the close of the sitting of the Assembly etc., etc.”

I fear, Sir, I feel rather, that this sub-rule, the first part of it imposing a time limit for consideration by the Assembly of all amendments, is an undue, unwarranted encroachment upon your powers. I am wholeheartedly in favour of cutting short unnecessary discussion and debate arid expediting the passage of the Constitution, as I have already stated. But, is it not part of your inherent powers, Sir, and is the House or any part of the House going to usurp your power in this field ? It is your undisputed power to fix any time limit for any debate. Why then make a specific mention in this rule that the President shall allot not more than two days—by the way, ‘may’ would have been more graceful and dignified? Is not the President supreme so far as the conduct of the business of the House is concerned ? It is up to him to regulate and conduct the business of the House. Why fetter his judgment by saying that he shall not allot more than two days or three days? Leave it to his discretion. He call certainly allot, if he thinks necessary, more than three or four days. During the First Reading of the Constitution in November 1948, you will remember Sir, before you fell ill, that you original intended to allot only two days for the First Reading of the Constitution, for the discussion of the motion by Dr. Ambedkar. Later on, you found that the House was keen on considering it further, and so you were good enough to allot another two days for the consideration of that motion. It may be quite probable, the sense of the House might be to ask for some more time. Here you are, Sir, with all powers vested in you to regulate the business. Why make this rule. here and fetter your discretion and judgment and abrogate or at least reduce the powers inherent in the President ? That is so far as the third amendment is concerned. I want to leave the matter to the President as to how many days should be allotted for the consideration and disposal of the amendments. We need not curtail the powers of the President so far as this matter is concerned.

I come to amendment No. 10 which reads as follows :

“That sub-rule (2) of the proposed new rule 38RR be deleted.”

That sub-rule relates to the time limit for speeches during the debate on a motion made under sub-rule (1), of Rule 38 RR. I would invite the attention of Mrs. Durgabai and the House to rule 34 of the Rules already adopted by the House. Rule 34 of the Rules of the Assembly reads as follows : “In all matters

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relating to procedure or conduct of business of the Assembly, the decision of the Chairman shall be final" I ask, is this not adequate for our purposes ? Is it necessary to frame or pass another rule, sub-rule (2) here ? This rule 34 of our Rules of the Assembly vests sufficient power in the President to regulate the conduct of the business of the House in whatever way he may choose, and his decision in the matter is always final. Why bring in this minutiae in the rules, that he shall fix a time limit ? This is his inherent power. Why bring in this trifle ? It is mere piffle. That is part of the manner in which he conducts the business of the House. You, Sir, have done it on many occasions, and you will do it again in the interests of expeditious disposal of business. There is no need at all for this sub- rule (2). It has appeared, I fear, by force of habit of some Members of the Drafting Committee or others who want to introduce all sorts of minute details, who want to cumber our rules and our Constitution with all sorts of unnecessary details. I therefore feel that this sub-rule should be deleted.

Coming to amendment No. 11, it reads as follows :

"That sub-rule (3) of the proposed new rule 38RR be deleted."

This amendment has got two aspects. The first aspect I have already touched. This sub-rule, the House will see, reads as follows :

"The President may in relation to any proceedings in connection with the passing of the Constitution under Rule 38R of this rule relax or suspend any of these rules." This is a laughable, and a most unnecessary rule. I have already stated, Sir, that you have got inherent powers to conduct the business of the House, and you can certainly regulate this matter as well. The second aspect is this. We seek to provide for various matters, and then suddenly at the end we come to the last provision and say that notwithstanding any of these rules anything may happen. We have provided for various matters in 38 and 38 RR and at the very end we say that the President may relax or suspend any of these. Why frame these rules and then say the President may relax these ? Can the President not exercise his discretion ? It is absolutely unnecessary and should be deleted.

My amendment No. 12 is partly consequential upon the amendments I have just now moved-Nos. 10 and 11. I move :

"That sub-rule (1) of the proposed new rule 38RR be added to Rule 38R as sub-rule (1)."

Sub-rule (1) of 38RR refers to the Third Reading of the Constitution and Provides that any Member may move that the Constitution as settled by the Assembly be passed, and to a motion so made no further amendment shall be allowed to be moved. That is a formal provision and I do not think there is any necessity for embodying it in a new rule 38 RR It flows from the rules that have been embodied in rule 38 R and it does not merit or deserve a separate place or separate entity as rule 38 RR All these rules relate to the final passing of the Constitution, and one set of rules to cover all these matters is sufficient. There is no need for two sets of rules.

In the end I shall only say that nobody will dispute the assertion of Shrimati Durgabai that the Constitution must be expedited; but it is wholly wrong to foist the blame for the delay upon the Members of this House. The Members of this House have always been willing and very eager to work for the expeditious disposal of this Constitution. At no time have the members grugged extra hours that they may have been called upon to put in for the discussion of the Constitution. If there be any blame, if there be any guilt, it lies elsewhere and not upon the Members of this House. I do not want to say who the

guilty men are but certainly it is erroneous and unjustified to say that any members of this House have been guilty of any inordinate delay in the passage of the Constitution so as to result in a heavy drain upon our financial resources. We have all co-operated to the best of our ability for the speedy passage of this Constitution, and we shall all be happy when shortly we come to the end of our labours.

Mr. President : All the amendments have been moved.

Prof. Shibban Lal Saksena (United Provinces: General): I have given notice of an amendment.

Mr. President : I have not got any notice.

Prof. Shibban Lal Saksena : I gave it this morning.

Sir, I beg to move :

“In the proposed new Rule 38 R, in clause (1) the following words be added at the end:—

“But the President shall have power to allow any other amendments to be moved according to his discretion.”

In the first rule we have said :

“When a motion that the Constitution be taken into consideration has been carried and the amendments to the Constitution moved have been considered, the President shall refer the Constitution as amended to the Drafting Committee referred to in sub-rule (1) of rule 38-L with instructions to carry out such re-numbering of the clauses, such revision of punctuation and such revision and completion of the marginal notes thereof as may be necessary, and to recommend such formal or consequential or other necessary amendments to the Constitution as may be required.”

Sir, we are still leaving many things in Appendix I which might be completely changed by the time we meet in the Third Reading. It is quite possible that many of the provinces might become two or three provinces. Madras might become Andhra and Tamil Nad and there might also be Karnatak and other provinces and, if that is done, then it will be necessary for the Drafting Committee to move further amendments and Members also should have an opportunity to discuss them. Therefore, it is necessary that the President should have the power to allow any other amendments to be moved in his discretion. We have full confidence in you, Sir, that you will allow only those amendments which are considered necessary because of the changes made between now and the next session. I, therefore, consider that this is a very important amendment and unless it is there, it will not be possible for the President to allow Members even to discuss the redistribution of provinces which may be effected by that time. I, therefore, think that my sister Shrimati Durgabai will accept this amendment and let Members have a right to discuss the new provinces which will be created.

My second amendment is:

“In the proviso to sub-rule (2) of Rule 38R, for the words ‘three clear days’ the words ‘five clear days’ be substituted.”

My Friend Mr. Naziruddin suggested seven clear days. Three days seems to be almost absurd. You have said that at least two clear days notice should be given for any amendment. Now if we get the new Constitution only three days before the session, then there is only one day during which we have to go through it and table amendments. That is impossible. There must be at least three clear days. It would be much better if we have seven days, but I know the difficulty about time and so I do not want to press for seven days but I do want that at least five days should be given.

You have said, Sir, that the final draft Constitution will go for print by the end of the this month and will be ready in five or six days, so that by the 5th or 6th November the printed copies will be ready and these should be able to

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reach Members in two or three days time. Probably if they are sent to our Delhi addresses they may come the same day but those who want it at their home address will get in three days. At least they will get three or four clear days. I therefore, think that five days should be mentioned here instead of three days.

I then move:

“In sub-rule (3) of the proposed rule 38R for the words beginning with ‘and at this stage’ to the end of the sub- rule, the following be substituted :—

‘and at this stage the debates shall be controlled by the President according to his discretion’.”

The present provision is most unfair. When the Drafting Committee move any amendment the Members should have a right to have a say in the matter. We have given the President the power to allow Members in his discretion to have their say. If there is some amendment of substance suggested by a member it should be permissible for the President to allow it to be moved. I hope Shrimati Durgabai will accept this amendment.

Then my next amendment is :

In sub-rule (b) of the proposed rule 38 R, the words ‘and it shall not be necessary for the president to put each of those amendments separately to vote’ be deleted.”

This has already been moved. I only wish to support it.

It is only proper that we should do so. It will not take much time.

And then I beg to move:

“That at the end of sub-rule (4) of the proposed Rule 38R, the following be added:—

‘except by the President according to his discretion’.”

As proposed, sub-rule (4) says:

“After the motion referred to in sub-rule (2) has been carried, any member may move an amendment which is either formal or consequential upon an amendment recommended in any provision of the Constitution by the Drafting Committee after the Constitution was referred to them under sub-rule (1) but shall not be allowed to move any other amendment.”

And I suggest the addition of the words—” except by the President according to his discretion.” This will allow amendments of substance also, but according to the President’s discretion. The amendments may be not only consequential and formal, but there may be amendments of substance also, and therefore the President should be given the power to admit them also. I am not giving the Members any right, but only arming the President with the power to exercise his discretion. I hope this amendment will not be objected to.

And then to the proposed rule 38 RR I have two amendments. It is proposed in sub-rule (2)-” The President may fix a time-limit for speeches during the debate on a motion made under sub-rule (1)”. That means when all the amendments are disposed of , then when the Third Reading comes a time limit will be imposed. I would very much have liked that no time limit is fixed, but that is not possible. Therefore I have in my amendment suggested:

“That in the proposed rule 38 RR, for sub-rule (2) the following be substituted:—

- (2) Members desirous of participating in the debate on a motion made under sub-rule (1) shall notify their names to the President at least 36 hours before the motion is made and the President may fix a time ,limit on the duration of speeches on the motion after receiving all such names, but the time limit shall not be less than 40 minutes. The President shall have power to give longer time to any speaker in exceptional circumstances, and he may also order a speaker to cut short his speech according to his discretion’.”

Sir, I only want that members who want to participate in the debate should be able to have an opportunity to do so. They should be permitted to give their names 36 hours before the motion. You may then, Sir, know the names of the Members who want to participate, and I suggest a minimum time of 40 minutes should be given to each speaker, because he has to make remarks on the whole Constitution. You may, according to your discretion, increase this duration or decrease it, if you find that a particular Member is making an important point or is wasting the time of the House, but everyone who wants to participate in the debate, must be given an opportunity to do so, and if the suggestion that I have made is adopted, then nobody will have any grievance. You will know the number of speakers and you will allot time accordingly and we will have a fairly good debate.

And then I also say in clause (2a):

“The President shall have power to extend the duration of the daily sittings of the Assembly.”

Now, we are sitting only for three hours in the morning and two hours in the afternoon, because we have our party meetings and other meetings, but they will all be over by the time we come to the final Third Reading, and there is no reason why we should not sit for longer hours. The House of Commons, as we all know, Sir, sits for nine to ten hours and if we want to finish our Constitution in the time prescribed, then we should extend our sittings, if necessary to eight or even ten hours so that everyone who wants to speak may have an opportunity to do so. I want to arm you with this power to extend the duration of sittings. You will have the number of speakers and then you will be able to calculate the time required, and you may extend the sittings accordingly. I would have wished that the Legislative Assembly Session was held on the 14th and the final reading of the Constitution came up later so that we might have had more time to go through it carefully and seen to omissions and punctuations and other formalities. But I hope the Drafting Committee will get busy and do the work for all of us.

Sir, I was not happy at the argument given by Shrimati Durgabai, that we have already wasted a lot of money on this. I think this Constitution is one of the biggest achievements of ours during the last three years. We have solved so many knotty problems, and the amount of time and money spent I think, is not disproportionate to the achievement. Mr. Kamath told us that we have spent about Rs. 60 to 70 lakhs over this Constitution, and that is not a big amount in three years. It is for the first time in the history of our country that we are giving a free democratic Constitution to ourselves and have integrated all the different parts of the country into one single whole. Therefore, I think the time and money spent on it is not time and money wasted. It is not as if all the work has been done in these sittings. A lot of work has been done in this committee sittings, behind the scenes, by the Drafting Committee. And I do not want that at the fag-end, we should hustle anything and be open to the charge by people who are opposed to us that we have hustled the Constitution through. So my amendments are necessary and I hope Shrimati Durgabai will accept them.

Dr. B. Pattabhi Sitaramayya (Madras : General): Mr. President Sir, we have come to the last stage of our journey. When the railway train goes along the well-laid track, its journey is well regulated. It goes at the maximum speed and then comes to a stop. When coming to the railway station, it is confronted with zig-zag lines, with lines on either side of the alignment, and every junction has to be carefully mapped out in the Station Superintendent's room so that he may be able to regulate the train from the cabin. It is thus that we have to pay particular attention to changes in the rules which may appear superfluous or unnecessary or formal, but at the same time deserve the attention of every Member of the House towards the last stage.

[Dr. B. Pattabhi Sitaramayya]

I this view, I have examined the wording, and coming to paragraph (1), that there is a little change necessary.

It says—

“. and such revision and completion of the marginal notes thereof as may be necessary, and to recommend such formal or consequential or other necessary amendments to the Constitution as may be required.”

The presence of both the words “other” and “necessary” gives me a little difficulty. The word “necessary” is deliberately put there. If it is meant to have a plenary meaning, then the word “other” attenuates that meaning. Therefore, I would suggest that if you mean “or necessary amendments”, then that necessity must be defined, because it may be ample or it may be circumscribed. If it is suggested that the necessity comprises *all those conditions which might have come into existence since the reference of the Draft to the Drafting Committee*, then, of course, it will have a plenary and ample meaning, and in that view, it is not merely formal or consequential; but the word “other” comes in the way of our giving this amplified meaning to the word “necessary”. Therefore, Sir, I would like the President or some Member with authority to explain to us what the word “necessary” means, and if the meaning that I have attached to it is the meaning, well and good; and if that is not the meaning that word is unnecessary; but if that is the meaning, then the word “other” may kindly be dropped.

Of course, I have not given notice of any formal amendment, but this being of a verbal nature, though it has got much significance, I trust that the good lady who has moved the rules will accept it.

Shri T. T. Krishnamachari : Mr. President, Sir, in supporting the motion made by my honourable Friend Shrimati Durgabai, I would like to answer one or two criticisms made by my honourable Friend. Mr. Naziruddin Ahmad, who I see is not in the House.

Sir, the idea of the Steering Committee in introducing this amendment to the rule is that the work of this House, in so far as the Third Reading stage is concerned, should be facilitated and expedited, without at the same time putting any unnecessary restriction on the freedom of the debate. Sir, time is a very important factor in the Third Reading stage. As we expect that you will ultimately decide, perhaps, that we meet again on 14th November, we have necessarily to finish by 26th November the third reading of the Constitution, because this House will have to meet elsewhere on 28th November. All these factors have been taken into consideration in trying to fix a programme for the Third Reading stage. The days therefore that are allowed for preliminary work in the nature of approving of formal amendments made by the Drafting Committee, which will be entrusted with the work of revising the Constitution and of making a fair copy of the same, have necessarily to be limited. That is the limitation that is sought to be imposed by the amendment to rule 38R.

I am afraid, in a matter like this, ultimately the decision must remain with you, even though we put it in the rules that only so many days should be allowed, and you have the final discretion in the matter, that discretion is only reinforced by the addition of rule 38RR and it is for you to decide whether the period will be limited to the extent mentioned in the rule or to extend it. There is no question of fettering your discretion. But I think we must work to a programme and a plan. The plan that at the moment suggests itself to us is that we should limit the number of days for discussion of the preliminary stage of changes suggested by the Drafting Committee in making a fair copy of the Constitution, and then proceed to what is perhaps very important in the opinion of many Members of the House, namely, the Third Reading speeches.

I have no doubt that this House will be fully represented in the Third Reading stage when this work, which is perhaps the work which I hope will remain permanent for many generations to come and on which those honourable Members who have been fortunate enough to be associated would like to say something, will be praised. No doubt we have ourselves bad in the course of our discussions pointed out the difficulties and have as it were blazed the trail for those who would work the Constitution in the future. Therefore it is very important that as many days as could possibly be provided for will have to be left for discussion at the Third Reading stage. If the number of days allotted for the preliminary stage is extended, it will to that extent impinge on the freedom of discussion at the Third Reading stage in which honourable Members would like to participate. So, my honourable Friends Mr. Kamath and Prof. Shibban Lal should remember this point when they want to extend the number of days for discussion of the preliminary stage.

One point made by Mr. Kamath, in spite of the fact that with your permission I intervened and explained when he was speaking, I am still unable to comprehend. As I told him, what we contemplate here is that, if you are good enough to commit the whole thing to the Drafting Committee to make a fair copy and make the necessary consequential amendments and also the other necessary amendments, we expect to bring out in book form the Constitution and the amendments and append to it a report which will seek to give an explanation, either in the body of the report or in the appendix, of all the changes made, minor or otherwise, so that the House could straightaway put its finger on the amendments made. If they feel that these amendments are such that they cannot accept them or some of them, they can move amendments, provided however that you feel that they are necessary, that they are not merely of a drafting nature or of an alternative nature, where the amendments suggested by the Drafting Committee would be enough for the purpose. It will be for you to allow the amendments to be moved.

But the procedure that we have envisaged is that the whole thing will be taken up together as a whole as the Draft Constitution has been taken up and Members will be perfectly entitled to move amendments subject to the exercise of your discretion. Then if those amendments are accepted or rejected, the consequences will follow. If no amendments are moved, the suggestion of the Drafting Committee will go through without any amendment. In such a case, if Members of this House consider that particular changes suggested by the Drafting Committee and incorporated in the fair copy of the Constitution should be accepted and do not move any amendment to the contrary, naturally there is no use multiplying the procedure by making every change made by the Drafting Committee the subject-matter of a vote and a decision by the House.

Sir, in regard to the matter mentioned by our respected leader Dr. Pattabhi Sitaramayya I must apologise to the House, as a Member who took part in the drafting of this particular amendment, that we have not fully examined the consequences of the word 'other'. I must say that I feel that the Doctor's interpretation is a correct interpretation. The idea that we had in mind in putting in the words 'necessary amendments' was to enable you to permit 'necessary amendments' should you consider them necessary in the fair copy that the Drafting Committee will be presenting to the House. I would earnestly suggest to you and to the House to accept the proposal made by my honourable Friend Dr. Pattabhi Sitaramayya and omit the word 'other' before the words 'necessary amendments' in clause (1) of Rule 38R.

So far as the other amendments moved are concerned, I do not propose to enter into their merits. I think they will be dealt with by my honourable Friend Shrimati Durgabai. But I may say that excepting so far as perhaps

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amendment No. 2 of Mr. Naziruddin Ahmad is concerned where my Friend has amplified the word 'clause' to mean articles, clauses and sub-clauses, nothing else need be accepted. This amendment does improve the wording. The other amendment suggested by Dr. Pattabhi Sitaramayya may also be accepted. There does not seem to be need for accepting the other amendments suggested by Mr. Naziruddin Ahmad, by Mr. Kamath and by Professor Saksena. But it is for the mover to accept or reject the suggestion I have made. I do feel that the House will recognise the necessity for providing a blue-print for getting through with our Third Reading stage in which we will have to provide for the maximum freedom possible for Members to suggest amendments necessary and also to make their own contribution to the debate in this House at the final stage so that the largest possible number of members could participate. The whole scheme of this rule has been framed with that view.

Now I would like to say a word in regard to certain implied powers which the President has and which we have categorically stated, particularly in rule 38RR. My honourable Friend Mr. Kamath objected to clauses (2) and (3) on the ground that the powers are implied and need not be categorically stated. If that is so, there is nothing wrong in stating them categorically. And the mere fact that the powers have been categorically stated would perhaps help us over the difficulties that arose on previous occasions, particularly during the last session. We had a little difficulty because of the inflexibility of the rules and the President did not want to take advantage of the very wide powers that are normally vested in him without any express sanction for that purpose. I feel, Sir that at the Third Reading stage it will be necessary to arm the President with specific and categorical powers of that nature.

Shri H. V. Kamath: What exactly is the confusion arising out of the word "other" which my honourable Friend, Dr. Pattabhi Sitaramayya asks to delete?

Shri T. T. Krishnamachari : The conclusion will be what was originally intended that there will be formal and consequential amendments. If any amendment of a different category becomes necessary in regard to what has happened between now and the 14th November perhaps, and the President considers they are necessary modifications—honourable Members should bear in mind that the authority to consider what is a necessary amendment happens to be the President—they will go through.

Shri H. V. Kamath: What about the word 'other'?

Shri T. T. Krishnamachari : Our revered Leader Dr. Pattabhi Sitaramayya felt that the word "other" qualifies the necessary amendments unduly and that it refers more to the words occurring prior to that word "formal or consequential" rather than to the word "necessary", and I agree with the interpretation of Dr. Pattabhi Sitaramayya. If the President agrees, he might put it to the House to decide on the matter.

Mr. Naziruddin Ahmad : The President has got full powers with regard to unnecessary and useless amendments.

Shri T. T. Krishnamachari : It has always been borne in mind. This Constituent Assembly, being a sovereign Body, the President has got absolute powers and that is not affected by mere rules. Nevertheless, we felt that it would be much better to precisely state why and how he would exercise those powers within the limits which is possible for us to envisage in our rules.

Mr. Naziruddin Ahmed : Supposing the Drafting Committee commits an obvious mistake indulges in a palpable error

Shri T. T. Krishnamachari : We depend upon Mr. Naziruddin Ahmad to fill up any lacuna.

Shri Kala Venkata Rao (Madras : General) : I would like to have this point answered. There is the question of linguistic provinces which have not been settled, and roughly the proposal seems to be to amend the Schedule if need be at the Third Reading stage. How will these rules affect that? How can we form new linguistic provinces through an amendment at the Third Reading stage and what is the provision in this blueprint of procedure which Shrimati Durgabai has presented before the House and which Mr. Krishnamachari has clarified? I want satisfaction on this point, Sir, whether it would be possible to move an amendment for the addition of certain States in Schedule. I would like to make consequential amendments in the whole Act. I would like that some provision should be clearly made under these rules to make that possible. That is my request.

Shri T. T. Krishnamachari : I do not want to anticipate the statement that the Honourable the President is likely to make with regard to Schedule I, but I would say that that and other factors that might arise would undoubtedly be covered by the words "necessary amendments". It would be made clear if the House adopts the amendment suggested by Dr. Pattabhi Sitaramayya. Thereafter the amendments moved may be consequential or they may be necessary.

Shri R. K. Sidhwa (C. P. & Berar : General) : Does my honourable Friend know that under the rules of the Legislative Assembly there is no time limit for speeches on the First Reading and Third Reading stages ? If that is so, why should we deny to any Member the privilege of speaking at the Third Reading for any length of time?

Shri T. T. Krishnamachari : My Friend is ignorant on this point. The present rules of the Legislative Assembly do fix a time-limit even for a Bill like the Finance Bill.

Shri R. K. Sidhwa : I do not know whether any fresh rules have been made by the Speaker, but those rules have not been placed before the House. So far as I know, there is no time limit. No doubt the inherent right of the Speaker is always there for checking a member if he is going out of the way or repeating arguments or unnecessarily taking up the time of the House.

Mr. President : May I just say a few words before I put this to the vote. As has been explained by Mr. Krishnamachari, the whole situation has to be taken into consideration before we launch upon the Third Reading stage. We, have two limits which it is not possible for us to cross. One is on this side and the other is on the other side. That is to say, it is not possible to begin before the 14th November and we cannot prolong our discussion beyond the 25th or the 26th at the latest, because the Constituent Assembly (Legislative) will meet from the 28th.

Shri R. K. Sidhwa : We can have night sittings even after that.

Mr. President : Within those 12 days if we sit on Saturdays also—or if you like to sit on Sundays 13 days—we shall have to complete the whole of the Third Reading stage. This is the time table envisaged by this amendment of the rules and these are the limitations which we have to observe. If we have more time on this side in connection with the amendments, we shall proportionately get less time for general discussion. If we allow more time to one speaker, we shall have proportionately to cut down the number of speakers. I was just considering how the thing will work in actual practice. If we give three days for the disposal of the amendments—two days are suggested but if one day more is

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given in view of the importance of the amendments that will be coming up—then we shall have nine days left. The last day I want to keep for other formalities. So, we shall have eight days. At the rate of forty minutes we can give a chance to sixty speakers.

Shri H. V. Kamath : How many hours daily?

Mr. President : Five hours.

Shri R. K. Sidhwa : We can sit for ten hours.

Mr. President : Ten hours; that means 120 speakers.

Mr. Naziruddin Ahmad : We do not mind sitting for ten hours.

Mr. President : It will depend upon you. You may sit as long as you like I shall not object.

Shri H. V. Kamath : We may sit for eight hours.

Mr. President : At that time, we will see. I am not fixing the number of hours now. I am only making certain arithmetical calculations. It will be for the House to say for how many hours it will sit. I shall not stand in the way. That I will promise. There will of course be the question of quorum, (*Laughter*) and it will not be in my power to compel Members to attend.

Shri Mahavir Tyagi (United Provinces : General) : I just want a ruling from you on a particular point, either your ruling or a reply from the honourable the I mover of the motion. There are amendments coming for changing the name of U. P. I want to know if you will permit them to be considered in the 3rd leading?

Mr. President : I can say this, that if there is general agreement about the change of name, I shall not stand in the way. If it involves discussion and if there are different suggestions made, then I shall stick to the name which is given here.

Shri Mahavir Tyagi : If the House leaves it to the U.P. Members?

Mr. President : I do not mind, but I would not like to interfere with the name of U.P.

Shri R. K. Sidhwa : The question of altering the name is very important and I would suggest it is not proper to leave it to the Members of this House. It should be left open both to the Government of that Province and to the Legislature of that Province. We cannot change the name of a Province by discussing it here. This matter should not be treated lightly.

Mr. President : I think you are right. I said if there is general agreement by all parties concerned then I will not oppose its discussion.

Shri Mahavir Tyagi : The word of the Premier of the Province should be considered enough.

Mr. President But at this stage I do not think we should insist on any commitments from me or from any Member. We should take things as they arise and we shall decide them when the question arises.

Now, it was mentioned by Mr. Naziruddin Ahmad and I believe by some other Members also, that the time that is allowed for giving notice of amendments is very short. It is now only three days. I would suggest it would be good if Mr. Shibban Lal Saksena's amendment could be accepted extending it to five days. But it all depends upon the resources of the Press. So far as it is possible we shall try our best, but if you like and if the office thinks

we could give five days, I personally would not object to five days being given.

Shri H. V. Kamath : Sir, you were telling the House, when Mr. Tyagi cut you short, about the length of 'sittings, and I think there is something left unsaid.

Mr. President : It will depend upon the House as to how many hours it wishes to sit but we could not go beyond the 26th in any case; that is fixed.

Prof. Shibban Lal Saksena : Would you not accept my suggestion that all Members who want to participate should give their names beforehand ?

Mr. President : It is not necessary to introduce it in the Rules. Supposing a Member fails to send his name I do not know if you would like we to disallow him. Shrimati Durgabai will reply now.

Shrimati G. Durgabai : Mr. President, Sir, before dealing with the amendments moved by my honourable Friends, I would clear up two points made by some of the Movers of the amendments. I will be very brief in my reply and not take much of the time of this House.

I have heard one honourable Member making this charge against the Drafting Committee that they have set up some lady to move these Rules. I may straightaway tell the House that it is not the business of the Drafting Committee. These Rules came up before the Steering Committee, and 'were approved by them and I have now moved them in this House. Another Member has made a suggestion that a lady has been put up to defend the action of the Drafting Committee. Sir, I am very sorry to find some of the honourable Members of the House—male Members—still conscious of this sex business though the women Members have completely forgotten it. I very much wish that There should be no longer any talk of this question of men and women.

As regards the amendments moved, honourable Members are aware that some were moved by Mr. Naziruddin Ahmad. I may straightaway tell the House that I have pleasure in accepting his amendment 2 (iii) which reads thus :

"for the word 'clauses' the words 'articles, clauses and sub-clauses' be substituted."

Though it is strictly a matter for the Drafting Committee. I will have no hesitation in accepting this amendment.

I would also be willing to accept amendment No. 2 of the list of amendments moved by Mr. Shibban Lal Saksena. The Honourable the President also has suggested that five clear days' notice would be required and therefore this amendment would be accepted.

With regard to all the other amendments particularly those of Mr. Naziruddin Ahmad, I would say that they are all matters for the draftsmen to set right because they are either verbal or grammatical or relating to punctuation. So they might be safely left to the Drafting Committee or the draftsmen. His amendment No. 6 about the three clear days' notice has already been covered by accepting Mr. Saksena's amendment about five clear days' notice being substituted for three days.

With regard to Mr. Kamath's amendments, Mr. Kamath wants to move substantial amendments by deleting the words "which is either formal or consequential upon". Our experience has shown that some thousands or substantial amendments have already been moved during the second stage of the

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consideration of the Draft Constitution. Now the Honourable the President has got the power to suggest any substantial amendment to be moved by the Drafting Committee. Therefore, it will not be necessary to enable Members to make substantial amendments and independent amendments at that stage.

Mr. Kamath had also questioned the power of the President to fix a time limit to the speeches and also the power to relax or suspend the Rules.

Shri H. V. Kamath : I did not question his power, I said he had inherent powers.

Shrimati G. Durgabai : To that my submission would be that no doubt the President has got over-all power in all these matters. He has got power either for fixing the time-limit or for disallowing any amendment at his discretion. But I wanted these Rules that I have moved to day to be self-contained and independent, a complete procedure to be laid down for the Third Reading stage of this Draft Constitution and its passing. Therefore, there will be nothing objectionable in making a complete, self-contained procedure for this purpose.

Shri H. V. Kamath : No necessity, though there is no objection.

Shrimati G. Durgabai : Mr. Sidhva raised an objection that in the Legislative Rules of Procedure there is no provision for time-limit, that the President could not fix a time-limit, but I would simply refer Mr. Sidhva to Rule 46, sub- clause (iv) of the Legislative Assembly Rules.

Shri R. K. Sidhwa : They have not been passed by the House. They were not placed before the House.

Shrimati G. Durgabai : We are following those Rules in that House. Therefore, I would simply refer him to those Rules under which the President has got the power to fix a time-limit. We are all aware that the President most necessarily have these powers, unless we want still further to delay and are not anxious to expedite the passing of this Constitution. Some Members have taken objection to my saying that it is a financial drain on the revenues of the country. In the name of the common man about whom we are always speaking here and everywhere. I will appeal to my Friends in the House. I appeal in the name of the common man, who is not interested in these long procedural questions but who is only looking forward to the day of receiving the benefits accruing from this Constitution, to expedite this work. Let us enable the President to exercise more drastic powers to expedite the work of this Constitution.

Shri H. V. Kamath : In the name of the common man, who has been guilty of delay here ?

Shrimati G. Durgabai : With regard to the point raised by Dr. Pattabhi Sitaramayya, my Friend Mr. Krishnamachari has already clarified the position. I would unhesitatingly accept the suggestion made by him, that is, the deletion of the word "other" before the word "necessary".

He also, I think, asked for the clarification of the word "necessary" amendments. Necessary amendments are those which have become necessary due to the changes in the country, which the President may allow the Drafting Committee to move, if he considers them necessary. After the clarification of the different points raised here, I have no hesitation in saying that the House will accept the motion that I have made.

Mr. President : I will now put the amendments to vote. The question is:

"That in the proposed now Rules 38 R and 38 RR, for the word 'Constitution' wherever it occurs, the words 'Draft Constitution' be substituted."

The amendment was negatived.

Mr. President: The question is:

“That in sub-rule (1) of the proposed rule 38R,—

(i) for the word ‘considered’ the words ‘considered and disposed of’ be substituted,—

The amendment was negatived.

Mr. President : The question is:

“That in sub-rule (1) of the proposed rule 38 R,—

(it) for the word ‘amended’ the words ‘(amended by the Assembly)’ be substituted,—

The amendment was negatived.

Mr. President : Part (iii) has been accepted, I understand. The question is:

“That in sub-rule (1) of the proposed rule 38R,—

(iii) for the word ‘clauses’ the words ‘articles, clauses and sub-clauses’ be substituted;—

The amendment was adopted.

Mr. President : The question is:

“That in sub-rule (1) of the proposed rule 38R,—

(iv) for the words ‘to recommend’ the words ‘to submit a report recommending’ be substituted.”

The amendment was negatived.

Mr. President : The question is:

“That after sub-rule (1) of the proposed rule 38R, the following new sub-rule be inserted:—

‘(1a) The Draft Constitution as revised by the Drafting Committee under sub-rule (1), shall indicate by suitable typographical arrangements the changes and omissions made by the Committee.’”

The amendment was negatived.

Mr. President : The question is:

“That in sub-rule (2) of the proposed rule 38R, for the words ‘After the Constitution has been referred to the Drafting Committee, the report of the Committee, the words ‘The report of the Drafting Committee’ be substituted.”

The amendment was negatived.

Mr. President : The question is:

“That in sub-rule (2) of the proposed rule 38R, for the words ‘in the Constitution’ the words ‘to the Constitution’ be substituted.”

The amendment was negatived.

Mr. President : The question is:

“That in the proviso to sub-rule (2) of the proposed rule 38R, for the words ‘three clear days’ the words ‘seven clear days’ be substituted.”

The amendment was negatived.

Mr. President : The question is:

“That in sub-rule (4) of the proposed rule 38R, for the words ‘which is either formal or consequential upon’ the word ‘to’ be substituted.”

The amendment was negatived.

Mr. President : The question is:

“That in sub-rule (6) of the proposed rule 38R, the words ‘and it shall not be necessary for the President to put each of those amendments separately to vote’ be deleted.”

The amendment was negatived.

Mr. President : The question is :

“That in sub-rule (8) of the proposed rule 38R, the words ‘shall allot not more than two days for the consideration by the Assembly of all amendments after the motion referred to in sub-rule (2) has been carried and’ be deleted”.

The amendment was negatived.

Mr. President : The question is :

“That sub-rule (2) of the proposed new rule 38RR be deleted.”

The amendment was negatived.

Mr. President : The question is :

“That sub-rule (3) of the proposed new rule 38RR be deleted.”

The amendment was negatived.

Shri T. T. Krishnamachari : No. 122 need not be put, Sir. It is only a consequential one.

Mr. President : Let me put that also. The question is:

“That sub-rule (1) of the proposed new rule 38RR be added to Rule 38R as sub-rule (10).”

The amendment was negatived.

Mr. President : I shall now take up Mr. Shibban Lal Saksena’s amendments. As they have not been circulated, I shall read them. The questions is:

“In the proposed new Rule 38R, in clause (1) the following words be added at the end :-

“But the President shall have power to allow any other amendments to be moved according to his discretion.”

The amendment was negatived.

Mr. President : The question is:

“In the proviso to sub-rule (2) of Rule 38R, for the words three clear days’ the words ‘five clear days’ be substituted.”

The amendment was adopted.

Mr. President : The question is :

“That in sub-rule (3) of the proposed rule 38R, for the words beginning with ‘and at this stage’ to the end of the sub-rule the following be substituted :—

“and at this stage the debates shall be controlled by the President according to his discretion’.”

The amendment was negatived.

Mr. President : The question is :

“That in sub-rule (6) of the proposed rule 38R, the words ‘and it shall not be necessary for the President to put each of those amendments separately to vote’ be deleted.”

The amendment was negatived.

Mr. President : The question is

“That at the end of sub-rule (4) of the proposed rule 38R, the following be added:—

“except by the President according to his discretion’.”

The amendment was negatived,

Mr. President : The question is:

“That in the proposed rule 38RR, for sub-rule (2), the following be inserted:—

- (2) Members desirous of participating in the debate on a motion made under sub-rule (1) shall notify their names to the President at least 36 hours before the motion is made and the President may fix a time limit on the duration of speeches on the motion after receiving all such names, but the time limit shall not be less than 30 minutes. The President shall have power to give longer time to any speaker in exceptional circumstances, and he may also order a speaker to cut short his speech according to his discretion.
- (2a) The President shall have power to extend the duration of the daily sittings of the Assembly.

The amendment was negatived.

Mr. President : There is an amendment suggested by Dr. Pattabhi Sitaramayya that ‘the word’ other, occurring in the last but one line be omitted. The question is :

“That the word ‘other’ occurring in the last but one line of article 38-R (1) be deleted.”

The amendment was adopted.

Mr. President : I shall now put the motion moved by Shrimati Durgabai., as amended, to vote. The question is :

“That for rule 38-R of the Constituent Assembly Rules, the following rules be substituted:—

‘38 R. (1) When a motion that the Constitution be taken into consideration has been carried and the amendments to the Constitution moved have been considered, the President shall refer the Constitution as amended to the Drafting Committee referred to in sub-rule (1) of rule 38-L with instructions to carry out such re-numbering of the articles, clauses and sub-clauses, such revision of punctuation and such revision and completion of the marginal notes thereof as may be necessary, and to recommend such formal or consequential or necessary amendments to the Constitution as may be required.

Revision of the Constitution by the Drafting Committee and the consideration of the amendments recommended by them.

- (2) After the Constitution has been referred to the Drafting Committee, the report of the Committee shall be presented to the Assembly by the Chairman or any other members of the Drafting Committee and thereafter the Chairman or other member of the Committee may move that the amendments recommended by the Committee in the Constitution so referred to them be taken into consideration.

Provided that no such motion shall be made until after the report of the Drafting Committee together with the copies of the Constitution as revised by them has been made available for the use of members and that any member may object to any such motion being made unless the report and the copies of the Constitution as so revised have been made available five clear days before the date on which the motion is made, and such objection shall prevail unless the President in his discretion allows the motion to be made.

- (3) While making any motion referred to in sub- rule (2), the mover shall confine himself to an explanatory statement and at this stage there shall be no debate, and the President may, after such statement has been made, put the question.
- (4) After the motion referred to in sub-rule (2) has been carried, any member may move an amendment which is either formal or consequential upon an amendment recommended in any provision of the Constitution by the Drafting Committee after the Constitution was referred to them under sub-rule (1) but shall not be allowed to move any other amendment.
- (5) If notice of a proposed amendment has not been given two clear days before the day on which the motion referred to in sub-rule (2) is to be taken up for consideration, 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.

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- (6) Notwithstanding anything in these rules, all the amendments recommended by the Drafting Committee, after the Constitution was referred to them under sub-rule (1), shall be deemed to have been moved, and it shall not be necessary for the President to put each of those amendments separately to vote.
 - (7) The provisions of sub-rules (2) and (3) of rule 38-P shall apply to every amendment of which notice has been given under sub-rule (5), and notwithstanding anything in these rules it shall be in the discretion of the President to disallow any amendment of which notice has been so given.
 - (8) The President shall allot not more than two days for the consideration by the Assembly of all amendments after the motion referred to in sub-rule (2), has been carried and shall, at the time appointed by him for the close of the sitting of the Assembly on the last of the allotted days, forthwith put every question necessary to dispose of all the outstanding matters in connection with those amendments, and in the case of amendments recommended by the Drafting Committee as such, he shall put only the question that the amendments so recommended be made or that the amendments so recommended as modified by any amendment or amendments adopted by the Assembly be made as the case may be.
 - (9) For the purpose of bringing to a conclusion any proceedings relating to such amendments on the last of the allotted days, the President shall have power to select the amendments to be proposed.
- 38-RR. (1) When the amendments to the Constitution referred to the Drafting Committee under sub-rule (1) of rule 38-R have been considered, any member may move that the Constitution as settled by the Assembly be passed, and to a motion so made no further amendment shall be allowed to be moved.
- (2) The President may fix a time-limit for speeches during the debate on a motion made under sub-rule (1).
 - (3) The President may in relation to any proceedings in connection with the passing of the Constitution under rule 38-R or this rule relax or suspend any of these

The motion was adopted.

DRAFT CONSTITUTION (*Contd.*)

First Schedule.—(Contd.)

Mr. President : We shall now take up the First Schedule. With regard to the First Schedule, there are a large number of amendments of which notice has been given. Some of those amendments relate to the Schedule as it was in the original draft; some others relate to the proposition as it was moved by Dr. Ambedkar yesterday. I find in respect to several of these amendments one difficulty—both in regard to the amendments relating to the original draft as also, some of the amendments relating to the proposition moved yesterday. The difficulty is that they do not actually represent facts as they are today: For example, the effect of some of these amendments is today down names of provinces which are not in existence today and about which we do not know whether they will come into existence at all. We shall experience, in fact, insuperable difficulties if this Constitution is passed containing names of provinces which are not in existence and omitting names of provinces which are in existence today. I do not know how the Constitution will work after it comes into force with names of provinces which are not in existence and omitting names of provinces which are in existence today. The whole structure of the constitution as it is framed, will be difficult of operation. For example, we do not know what the Assembly will be :whether it will be the Assembly of Madras, or whether it will be the Assembly of Andhradesha or of Tamilnadu. Similar difficulties will arise with regard to numerous other provinces in the Constitution.

I would therefore suggest to honourable Members that at this stage when the question with regard to, the creation of new provinces has not actually

been decided it may not be wise to include in the Constitution names of Provinces which we hope or propose to create. but which have not been created. Similarly, there may be other difficulties also arising in connection with those other Provinces which are in existence and with regard to which some changes are sought to be introduced by some other amendments.

There are some amendments relating to the transfer of certain areas from one Province to which they are attached today to another province. If we pass the Constitution as it is, the transfer of those areas does not automatically take place and similar difficulties will be experienced if we include in the territories given in the Constitution areas which are not included in the territories of the provinces which are named.

I would, therefore, suggest to honourable Members not to bring any amendments at this stage, which will create difficulties in the actual operation of the Constitution when it is passed. I have no doubt that there are certain Members, in fact there are many Members in this House who are keen on certain matters with regard to the creation of new Provinces or even with regard to the change of the boundaries of Provinces, but those things should be first brought about before they can be incorporated in the Constitution; and I would therefore, suggest to those honourable Members who have given notice of such amendments to bring about the change which they want in the actual situation and then ask the Constituent Assembly to incorporate these changes in the Constitution. We have made provision in the rules which we have just passed in the form of rules for introducing amendments which will conform to facts as they will exist at the time when the Third Reading takes place and if any changes are brought about within this time the Drafting Committee will certainly take note of these changes and it will certainly bring them up before the House. I hope that this statement of mine will enable honourable Members to consider the question from this point of view and if they agree, we might also incidentally save some time of the House by not having to consider those amendments, and ultimately it may be that many of them may not be accepted.

Shri H. V. Kamath : As regards the re-naming of existing provinces, I would request you to see to it that in every case the matter of re-naming of the province is left to the Provincial Government, the legislature, the P.C.C. and the representatives of that province in this House.

Mr. President : So far as this is concerned, I think there is change in the name of only one province, I believe. There is no other.

Shri H. V. Kamath : There is C. P. and Berar.

Shri Mahavir Tyagi : There are amendments to change the name of U.P. also.

Mr. President : There are amendments for the change of the name from Orissa to Utkal.

Shri T. T. Krishnamachari : So far as the adoption of any change in the name of a State is concerned, in the draft that is before the House, we have been following one principle, namely, if there is a substantial number of Members wanting a change and that change has been approved by the Premier of the province, we have put it in one amended schedule and that is the reason why the name, so far as C. P. is concerned has been changed. We have received a representation from a number of Members belonging to Orissa and the matter will have to be referred back to the Premier of the Orissa Province and if he agrees and if you, Sir, and the House permit, we might probably introduce an appropriate change in the revised fair-copy to be taken into consideration at the next session, changing the name from Orissa to Utkal; but that is the principle that we have followed in accepting an amendment for a change where they have been more or less approved or ratified by the Premiers of the Provinces concerned

Shri R. K. Sidhwa : I take strong exception to the suggestion made by my honourable Friend, Mr. T. T. Krishnamachari.....

Mr. President : He has only explained the position.

Shri R. K. Sidhwa : We had experience on the question of the Second Chamber being left to the Members of this House and there has been subsequently clamour that nobody was consulted in the province and many of the people in the province felt that it was improper to have retained the Second House without consulting them. Therefore on matter of greater importance than that, i.e., changing the name of the province, as I suggested earlier not only the Premier but the whole Cabinet of that province and also the members of the Legislative Assembly may be given an opportunity to express their point. This matter is not a small one and anybody can make a suggestion in this House or even the Premier. With due respect to the Premier, it is just possible....

Mr. President : May I suggest one way out of this difficulty. On behalf of the Constituent Assembly. I propose to send, to the various provinces whose names are sought to be changed, to the Governments of those provinces to express their opinion on them and when we have got their opinion. if necessary, we may introduce the changes even at the Third Reading stage.

Honourable Members : All right, Sir.

Shri H. J. Khandekar (C.P. & Berar : General) : I am very glad that you are giving instructions to the Provincial Governments suggesting the names of the provinces. I also suggest.....

Mr. President : You have misunderstood me, I am not giving instructions. If any proposals have come here, I will send those proposals to the Provincial Governments for their opinion.

Shri H. J. Khandekar : I suggest, Sir, that the opinion of the Members of the province should be taken into consideration as they have been done in the case of the Upper House, I mean the M.C.As.

Mr. President : The Members are present here.

Shri H. J. Khandekar : I mean the same, Sir, that the opinion of the Members of the Constituent Assembly of the Province the name of which is to be changed.

Mr. President : They will be present here and they will be able to express their views.

Shri H. J. Khandekar : Thank you Sir.

Shri H. V. Kamath : Do you want specific proposals, Sir, in this regard ?

Mr. President : No. There are so many amendments and I will take note of those amendments which have already come.

Shri Kuladhar Chaliha : (Assam : General) : I have an amendment and I want to change the spelling of the word Assam only because it is anglicised. Instead of the word "Assam" I want the word "Asom".

Mr. President : In that also I shall consult the Provincial Government. What shall we do now ? Shall I now take up the amendments ?

Honourable Member : Yes, Sir.

Shri Gokulbhai Bhatt (Rajasthan) : *[Mr. President, on a point of clarification, Sir, the schedule which has been placed before us excludes a part of India, about which nothing has been decided as yet and that part is Sirohi. It would be better if any member of the Drafting Committee clarifies it.]

* [] Translation of Hindustani speech.

Mr. President : There is an amendment with regard to that; but I do not know the exact position myself.

Shri K. M. Munshi : May I say, Sir, with regard to what my honourable Friend Mr. Gokulbhai Bhatt said, I ascertained the position from the Deputy Prime Minister. So far as Sirohi is concerned, it has not yet been finally settled as regards the province in which it is to be placed. At present, it is being administered by the Government of Bombay under the Extra-Provincial Jurisdiction Act.

Shri Jainarain Vyas (Rajasthan) : Mr. President, I want to draw the attention of the House to the note under Part I where the province of Bombay has been defined. The last four lines of that note state : “any territory which immediately before such commencement was being administered by the Government of that province under the provisions of the Extra-Provincial Jurisdiction Act, 1947.” This note makes it clear that the territory which was administered by that particular province before the commencement of the Constitution would be included in the province of Bombay. This means that Sirohi would go to Bombay even without a covenant being signed by the Boy Ruler of Sirohi or the mother of the Ruler, or the Ruler whose case is pending in Bombay. In that case, I would request Mr. Munshi to see that these lines which say “which immediately before such commencement were being administered by the Government of that province under the provisions of the Extra Provincial Jurisdiction Act, 1947” are deleted so that there may be no apprehension in the minds of the people of Sirohi that Sirohi has merged.

Mr. President : This does not apply only to Sirohi. It applies to other areas also.

Shri Jainarain Vyas : That would apply to Sirohi also and Sirohi would be considered to have merged even without a covenant being signed. That I want to point out.

Mr. President : We can make an exception in that case.

Shri K. M. Munshi : My honourable Friend Mr. Vyas must realise that the whole of this Schedule has been drafted on the basis of what is existing today. We do not want to disturb the existing conditions. Nor is it suggested that no changes should be introduced in this matter. As has already been pointed by the Honourable the President, if circumstances change hereafter, when we come to the Third Reading, those changes will be duly incorporated. At the present moment what is stated in the schedule is quite clear and therefore the reference to Sirohi is irrelevant at the present moment.

Shri H. V. Pataskar : (Bombay : General): There is one question which I would like to ask. So far as Sirohi is concerned is it part of Bombay or is it a separate State?

Shri K. M. Munshi : I do not know, I am not in a position to make any authoritative statement on that question. So far as I know, it has been transferred to the Centre and the Centre has given it to the Bombay Government for purposes of administration under the Act. I speak subject to correction. That is my impression.

Shri Shankarrao Deo (Bombay : General) : Is it not necessary, Sir, that the House should know the exact position? Some Members are interested in the matter and want to know whether Sirohi forms part of Bombay or has been transferred to Bombay for administration. Will you please request the States Ministry to make a statement on this ?

Shri K. M. Munshi : Yes, I will.

The Honourable Shri K. Santhanam (Madras : General) : Up to the 26th of January, is it not open to the States Ministry to make adjustments ?

Shri K. M. Munshi : Mr. Santhanam is correct. Up to the 26th of January, it is perfectly open to the Government of India to transfer any part of a State to any Province. That is the position in law. So far as the present Schedule is concerned, it applies on and after the 26th of January. Whatever portion of a State on that date, has been transferred to Bombay under the Extra-provincial Jurisdiction Act will be in Bombay. What has been transferred to some other province will be in that province. Mr. Shankarrao Deo asked what is the present position of Sirohi. That is how I have understood it.

Shri Shankarrao Deo : I Would like to know what will be the status after the 26th of January.

Shri K. M. Munshi : That will be decided on or about the 26th of January.

Shri Shankarrao Deo : We would request you to convey the desire of some Members here to the States Ministry that they would like to know what is exactly their mind and scheme for Sirohi.

Shri K. M. Munshi : I shall convey the request to the proper quarters.

Shri Sarangdhar Das (Orissa States): Sir, I have got a certain amendment which does not come in the category of amendments that you have said should not be moved. I wish to move them when an opportunity is given to me.

Mr. President : I am going to call every amendment and every Member is free to move whichever amendment he likes. The first amendment is No. 404, Mr. Kuladhar Chaliha—Do You want to move this ?

Shri Kuladhar Chaliha : Yes, Sir,

Mr. President : It was suggested that these may be referred to the provincial Governments.

Shri H. V. Kamath : They may be formally moved and then referred to the Provincial Governments.

Shri R. K. Sidhwa : You may take the sense of the House on this question, Sir,

Mr. President : I have only made a suggestion. But, if Members insist on moving their amendments, I cannot prevent it.

Shri Kuladhar Chaliha : Sir, I move:

“That in amendment No. 380 of List XV (Second Week), for item I of Part I, the following be substituted:—

“1. Asom.”

Mr. President : If it is once moved I shall have to dispose it of in some way. It will have to be put to the vote.

Shri M. Thirumala Rao (Madras: General): The proper spelling of Assam is Assam. He has given his remedy to spell it Asom. ‘Asom’ can be pronounced as ‘Assom’ if he likes.

Mr. President : Amendment No. 405.

The Honourable Shri K. Santhanam : Each amendment may be disposed of separately and may be put to the vote.

Mr. President : I shall take each amendment separately. Mr. Chaliha if you want to move your amendment, then I shall have to put it to the vote

Shri Kuladhar Chaliha : I only want it to be referred to the Government, Sir.

Mr. President : Amendment No. 405. Mr. Brajeshwar Prasad do you want to move it ?

Shri Brajeshwar Prasad (Bihar : General) : Yes, Sir.

Shri R. K. Sidhwa : Once it is moved, it becomes the property of the House.

Shri Brajeshwar Prasad : Yes, Sir, I know. You may reject it. I know you will reject it.

Mr. President : If you want, you may reject it. He takes the risk.

Shri Brajeshwar Prasad : There are seven amendments standing in my name so far as the first Schedule is concerned. I refer to amendments 335, 340, 348, 356, 357, 358 in List XIV Second Week. In List XVII, there are two amendments 405 and 411. With your permission, Sir, I move amendment No. 358. There is a technical difficulty.

Mr. President : As I have said if your amendment is carried, it will create a situation in which it will be impossible to work the Constitution. It means lumping together all the Hindi speaking areas. How will they be described in the Constitution and what will be the Legislature and who will be the Governor ? There are five Governors in the 5 States and provinces now. Which will be the Legislature that will function in that State which you wish to create by this amendment of yours ? That is the difficulty which I have been pointing out.

Shri Brajeshwar Prasad : I thought your observations referred to linguistic provinces only.

Mr. President No, I have made this suggestions out of courtesy to the Members of this House, I am entitled to rule them out of order.

Shri Brajeshwar Prasad : I will bow down to your observations.

Shri H. V. Kamath : May I know whether all these amendments with regard to renaming of provinces will be referred by your Secretariat to the provinces concerned ?

Mr. President : Yes, all amendments relating to names.

Shri Mahavir Tyagi : Have all these been ruled out of order ?

Mr. President : Yes. All those amendments which want to create new provinces either by lumping together provinces or carving out parts of one province and by mixing together areas of one province with other provinces, are ruled out of order. Wherever any amendment impinges the boundary of one particular province today is ruled out, because it does not correspond with existing facts.

Pandit Balkrishna Sharma (United Provinces : General) : There was an amendment from a Member from Madhya Bharat. It was said at that time that Dr. Ambedkar was prepared to accept that.

Mr. President : Let that change be made in fact; then we shall take it.

Prof. Shibban Lal Saksena : May I move 406 proposing that the U.P. be, named Brahmavart, Aryavart, Hind or Brij Sakait ?

Mr. President : All amendments relating to names will be referred to Provincial Governments for their opinion. So it is not necessary to move your amendment. I do not think there is any other amendment now which remains with

[Mr. President]

regard to this after all these amendments altering the territories have been disposed of.

Shri Sarangdhar Das : May I have your ruling, Sir, about, my amendment ?

Mr. President : I have ruled it out of order because it seeks to transfer certain territories from one province to another.

Shri Sarangdhar Das : It is not transfer, Sir. It provides for determining the wishes of the people and according to such wishes a certain area may go from one province to another or may not. I will give you my argument for it.

Mr. President : This cannot be a part of a Constitution. This is a Resolution for the Assembly. You can move that in the Assembly, and if you succeed there and you get this change made, it will become part of the Constitution.

Shri A. Thanu Pillai (United State of Travancore & Cochin) : Article 3 provides for such cases.

Mr. President : Yes, I am grateful to you for pointing that out.

Shri Yudhisthir Misra (Orissa States) : Some of the amendments which have been given notice of contemplate the change of boundaries of different provinces; but so far as the States are concerned, I think you will remember that last January we had amended the Government of India Act, 1935, and passed a new Section 290 A and it is according to that provision that these States have been given to certain neighbouring provinces for the sake of administration. I submit they do not legally form part of those provinces but they have been given to those provinces for administration. Therefore my amendment No. 390 cannot be ruled out.

Mr. President : My ruling is based upon one thing, *viz.*, that we cannot by any amendment of the Schedule introduce any change in the existing state of affairs and in the Constitution we are providing only for those things which are today in existence and not for what we wish or what may come into existence later. Therefore, I say that these amendments which contemplate changes are ruled out.

Shri Sarangdhar Das : What about Seraikella ?

Mr. President : It is open to them to have a change in the decision before 26th January.

Shri Sarangdhar Das : Mr. Munshi in reply to the problem of Sirohi, as posed by Mr. Jainarayan Vyas, stated what the Deputy Prime Minister intended to do. So, I wish that there should be some statement on my amendment, because I maintain that these two States had been integrated into Bihar against the wishes of the people as well as the Rulers. It goes against the Preamble of the Agreement that the Rulers entered into with the Government of India. Also when they were integrated into Bihar last May, the Ruler of Seraikella replied to the Officer appointed by the States Ministry, that Seraikella was integrated temporarily for purposes of administration; but that before the Constitution is finally adopted the wishes of the people and the rulers have to be ascertained. That is why I introduced this provision, and if the States Ministry would make a statement as to whether these States have been merged permanently in Bihar or the matter will be considered by a Boundary Commission or some other way will be found to determine the wishes of the people. I would be satisfied and withdraw my amendment,

Mr. President : I believe the State Ministry issued a communique the other day saying that they stick to the decision which they have taken previously. I think they have issued such a communique and it was published the other day.

Shri Yudhisthir Misra : So far as we the representatives of the merged States are concerned, we are here to represent their case in the Constituent Assembly. Now you are going to make certain provisions in the Constitution, so far as the merged States are concerned, and if we, the representatives of the merged States, are not to have our say here, then what are we here for? I submit it would not proper to shut out discussion of this question.

Mr. President : I do not think, I can go back upon the ruling which I have given.

Prof. Shibban Lal Saksena : Sir, I have to say something about Part III.

Mr. President : What about Part III.

Prof. Shibban Lal Saksena : Sir, here we have defined the territories Rajasthan and Saurashtra and said that Saurashtra shall comprise the territories which immediately before the commencement of this Constitution were comprised in United State of Kathiawar and the territories which immediately before such commencement were being administered by the Government of that State under the provisions of the Extra-Provincial Jurisdiction, Act, 1947. And in the Names of States, we have put in Jammu and Kashmir, also. I want to clarify the position. I want it to be stated here that the State of Jammu and Kashmir shall comprise the territory as it was immediately before the 15th August, 1947 and which were being administered by the Maharaja of Jammu and Kashmir on that date. This, Sir, is necessary, because at present, as we all know there is the Cease-fire Line and part of the area is in the possession of the raiders.

Mr. President : It is a purely political question and we cannot decide it by a resolution of this House.

Prof. Shibban Lal Saksena : Then what will be the position of Jammu Kashmir ? What will be its area ?

Mr. President : Well, whatever we have, got now we have got, and if we' get more, we shall have more.

I think there is no other amendment. If any Member wishes to say any thing about the amendments he can do so.

The Honourable Shri N. V. Gadgil (Bombay : General) : Sir, I thought some of us belonging to Maharashtra have a duty on this occasion to make, at any rate, our position clear. The recent resolution of the Working Committee, although very helpful, does not give sufficient lead, because at this time, when the Federal Constitution is being, framed, certain principles which should govern the delimitation of the constituent units should have been laid down. At the same time, I realise that this is not a very propitious time. As I have always expressed, this is a question which can and must be solved with understanding, with agreement and in an atmosphere of goodwill. I also realise this. non-speaking before the committee that was appointed by you, I pleaded that this question should be postponed for a period of five years. It is not that I am stating this for the first time. I am cognisant of the difficulties and therefore, I am repeating it, not merely in connection with the formation of Samyukt Maharashtra, but in connection with other provinces also; and I am encouraged because I find that the present clause (3) as amended has really facilitated matters. As it stood originally it was a very laborious and long winding process, but now a Bill can be brought in for the delimitation of any province, and such a Bill will not be considered as a Bill amending the Constitution. Now the position as it has developed in this, that we have a machinery in the Constitution itself, and therefore, all questions about the formation: of provinces need not be raked up now, and the Schedule, as suggested by Dr. Ambedkar should be accepted. That is the point I wanted to make out.

[The Honourable Shri N. V. Gadgil

There is one little suggestion I want to make. If you want to have the Hindi Karan of the names, do not confine it merely to a few, such as Koshal Vidarbh etc. You can call Bombay "Paschim Bharat....." and Madras..... "Dakshin Desh", etc. If you want to do it, do it completely, but not by parts. This suggestion of mine may please be kept In mind by the Drafting Committee. Otherwise all sorts of implications are likely to come out and instead of doing any good, such a thing is bound to do more mischief than is contemplated by those who have inserted these exceptions alone. I would, therefore urge upon the Members of the Drafting Committee that this may be kept in mind.

I think any discussion with respect to delimitation or correction of boundaries would be more properly and more successfully taken up when the new Constitution comes into operation, and when the electorate gives, I should say, a mandate, and those who are today of the view that a particular solution is the only feasible solution, well, they have got to be persuaded and they have got to be convinced that an alternative solution, and a much better one in the larger interests of the country is available. So taking, all these factors into consideration. I state that the whole question should be postponed and that the Schedule as proposed, with the suggestion that I have made, about the change of the names, may be accepted.

Shri Jainarain Vyas : Mr. President, Sir, I bow to your decision, but I want to make two simple submissions regarding Sirohi. One is that at present Sirohi is constitutionally a "no man's land". It is a territory not covered by Part I of Scheduled One, or Part II or Part III. and I understand that my learned Friend Mr. Munshi is going to request the state Ministry to make a declaration on this point. I hope that that declaration will be forthcoming. The Second submission is that in the amendment which has been officially put up by Dr. Ambedkar, Bombay Presidency has been defined in a way to incorporate Sirohi. The application of the Extra Provincial Jurisdiction Act, 1947, to Bombay means no territory except Sirohi. So while making that declaration, I hope the States Ministry will clarify this position in regard to the definition of Bombay. Otherwise the people in Sirohi as well as in Rajaputana and in the country as a whole, will have every right to apprehend that Sirohi is silently being merged into Bombay without proper formalities being performed.

This is all that I wanted to say.

Shri Yudhisthir Misra : Sir according to the amendment moved by Dr. Ambedkar, the States the rulers of which have ceded their jurisdiction and powers over the same, to the Central Government, have been included in the provinces. In. January last, the Government of India Act of 1935 was amended and power was vested with the Central Government to hand over those States to any province for the sake of administration. According to the provisions of 290 A,. therefore, although there has been an administrative merger, still by legal fiction, the constitutional entities of the States have been maintained. Therefore I want a clarification of the point from the Drafting Committee whether the same position has been maintained in this draft or not.

Sir, when Sardar Patel visited Cuttack on 14th December 1948 and , the rulers of the Orissa States entered into an agreement with the Government of India, these rulers had specifically mentioned in the preamble of that agreement that their States should be handed over to the provinces of Orissa for administration. I will read the relevant portion of that agreement by the Raja, of Seraikella "whereas in the immediate interests of the State and its people the Raja of Seraikella is desirous that the Administration of the State should be integrated as early as possible with that of the province of Orissa in such manner as the Government of the Dominion of India may think fit...." Now by provid-

ing for the amendment which has been moved by the Drafting Committee, the agreement has been violated. I would request the Drafting Committee to consider this point.

Sir, I represent the Orissa States along with Shri Sarangdhar Das and have therefore a special responsibility in this matter. As far as these two States of Seraikella and Kharswan are concerned, they have elected us as their representatives. I think it is but proper that their wishes should be Placed before this House as briefly as possible. From time immemorial the people of these two States have social and cultural contact and relationship with the people of the Orissa province and they have linguistic and racial affinity with them. These two States were and are still under the Utkal University having its headquarters at Cuttack. Oriya is the court language of these two States and in the primary schools there till recently, education was being imparted through Oriya. For administrative political purposes also these two States were included in the Orissa group of States previous to 1948. It is unnecessary for me to relate that the movement for the integration of the Orissa States including Seraikella and Kharswan started in Orissa under the leadership of the leaders from Orissa.

Shri Brajeshwar Prasad : This matter has been finally disposed of by the States Ministry and according to the circular which has been issued, re-distribution of provinces has been made. Now to take off one' territory and add on to another could not be done. I think the honourable Member is going beyond his jurisdiction.

Shri Yudhisthir Misra : As far as this House is concerned, it has nothing to do with the States Ministry. It has nothing to do with any order passed by the States Ministry. Therefore I am entitled to express my views in this House. If you, Sir, say that I have no right, I will resume my seat.

Mr. President : I wish to point out that these views of yours expressed here will have no effect anywhere. This House cannot change the boundaries of Orissa.

Shri Yudhisthir Misra : Let me at least have the satisfaction that I have placed the views of the people, as their representative, before this House. It is for this purpose that I took your permission to participate in this debate. Sir, it was in the Orissa States that the question of merger of the small States with the provinces was first mooted and it was there that the ideal of the merger of States with the provinces took its real shape. When the Honourable Sardar Patel was in Cuttack, he took the step of entering into an agreement with the rulers of the States as a result of the wishes of the people expressed to him through the All India States People's Conference, through the regional council and also through the various Praja Mandals. As you are aware, these two States in January 1948 were handed over to the province of Orissa; but, owing to certain unfortunate incidents, there was firing and these two States, in consequence were handed over to Bihar. There was a great tussle before that between Orissa and Bihar over this question and the Government of India announced the, appointment of a Judicial Tribunal presided over by an eminent' judge of the Bombay High Court to ascertain the 'wishes of the people regarding the language and culture and the administrative convenience as far as these two States are concerned. There was expectation of a fair and impartial solution of the problem through this Judicial Tribunal. But, to the great surprise of the people of the States, they were placed under the Government of Bihar and thus debarred from exercising their right of self-determination. It was then understood that the Raja of Seraikella wanted temporarily that his State should be placed under the Bihar Government for administration till a new Constitution was framed and adopted.

Sir, to a question of mine in 1948 in the Constituent Assembly (Legislative). . . .

Shri Brajeshwar Prasad : I will have no time to reply to the honourable Member. I have met the Maharaja of Seraikella and he told me that he wants the merger of Seraikella with Bihar.

Shri Yudhisthir Misra : Let the honourable Member go through the representation that the Maharaja of Seraikella has made recently to the States Ministry. In 1948, Sardar Patel was pleased to give me the reply that the handing over of Seraikella and for Kharswan administration to Bihar was only a temporary affair. I find, Sir, that in last August these States were transferred permanently to Bihar under section 290 A of the Government of India Act. The wishes of the people of the States were not consulted.

Shri Brajeshwar Prasad : Wrong statement.

Shri Yudhisthir Misra : As far as the people were concerned, they were left out of the picture completely. If it is wrong, as is suggested by my Friend, Mr. Brajeshwar Prasad, then I challenge him to accept a referendum to ascertain

the wishes of the people of these States. If he accepts it, I will not press for what I am submitting in this House.

Shri Brajeshwar Prasad : Let the honourable Member write to Sardar Patel and ask him to reopen this question.

Shri Yudhisthir Misra : My Friend is side-tracking the question.

Mr. President : I do not want challenges thrown and accepted here.

Shri Yudhisthir Misra : The only ground which was put forward by the States Ministry as to why these States were transferred to Bihar was that if these States were transferred to Orissa, there would be certain administrative in convenience. Now, Sir, when the State of Mayurbhanj was merged with Orissa that difficulty was removed, and the only ground that was put forward by the States Ministry for handing over these States to Bihar falls to the ground.

I want to resume my seat with a few more remarks. The steps that have been taken in regard to these two States are not proper, or just or legal or valid. I want a change in their position by a change in the First Schedule. I submit that these observations of mine should be taken into consideration and the future fate of these two States should be decided in accordance with the wishes of the people.

(Shri Jadubans Sahay rose to speak)

Shri H. V. Pataskar : I will finish within a few minutes. I am going away tomorrow.

Mr. President : Are we sitting tomorrow ?

The Honourable Shri Satyanarayan Sinha (Bihar : General) : Not in the afternoon today anyhow, Sir.

Mr. President : (To Shri Jadubans Sahay)-Do not take much time.

Shri Jadubans Sahay (Bihar : General) : Sir, I would not have taken part in the general discussion but for the remarks made by the honourable Friend from Orissa just now. I would not go into details, but I would only tell my Orissa friends and other friends that the matter has been already settled finally. There ought to be some finality in everything. If the Orissa and Bihar friends go on wrangling over this issue which has been finally decided by the Minister for States and which has been taken for granted, then there will be no end to the ill-will prevailing between the two provinces. We in Bihar expect that this matter having been finally settled would restore the goodwill and good feeling and mutual understanding which exist between these two provinces and ought to exist not only in the general interests of these two provinces but in the general interests of the country a whole. I therefore, Sir, this question which

has been sought to be raised in this House by the observations made by Mr. Yudhisthir Misra should not have been raised.

The whole question is whether the merger of Seraikella and Kharswan with Bihar should be reopened again. The Honourable Sardar Patel went to Cuttack, he saw everything, he appointed the officer, he looked into the Covenant entered into by the Raja of Seraikella and after considering all these things, the States Ministry under the able guidance of Sardar Patel has given out that the final decision is that these two States of Seraikella and Kharswan should remain finally merged with Bihar. Where is the question of reopening the question now ? Because the reopening of this question will not do any good to either of these two provinces. I would simply appeal to my Orissa friends that this will not redound to the credit of these two provinces.

Apart from this, under the encouragement of Orissa, the Maharaja of Seraikella who is a disgruntled man, for reasons not within the control of the Government of Bihar, has distributed a pamphlet among the Members of the Constituent Assembly, but we thought that saner elements in Orissa would prevail; but instead of that, if the statesman of Orissa lend a hand to such agitation, then, Sir, it would not do good either to the province of Orissa or to Bihar, Let them give us time to do some constructive work-to ameliorate the conditions of the aboriginals and the non-aboriginals who are living in the States of Seraikella and Kharswan. The Bihar Government is doing its best to raise the economic condition and the educational condition of the people of these two States. If this wrangling goes on, it will prove a very bad thing so far as these States of Seraikella and Kharswan are concerned. I will therefore not try to reply to Mr. Yudhisthir Misra, but I will simply appeal again to the friends from Orissa to help us in restoring goodwill between the two provinces and not try to rake up this matter which has been finally decided by the Minister for States.

Shri H. V. Pataskar : Mr. President, Sir I had a number of amendments standing in my name to this Schedule, but I thought and thought rightly that no purpose would be served by moving them. I have also a amendment No. 324 for the insertion of article 3A for the formation of a new State of Maharashtra, but for practical considerations I did not move it also, because I knew there was no chance for it. What I want to make quite clear is that we have postponed consideration of this question because of a resolution of the Working Committee by which it will be possible to form some of the provinces in respect of which an enquiry was ordered by you, Sir, some time ago by the appointment of a Commission.

So far as Maharashtra was concerned, that resolution of the Working Committee says, that subject to the conditions mentioned in the report of the three man committee known as the J V P Committee, the State of Maharashtra should be formed. That report lays down that under no circumstances will Bombay city be included in the State of Maharashtra. I do not want to create any discussion or controversy at this stage. I would only like to make it clear that so far as Maharashtra is concerned a State of Maharashtra without the city of Bombay will never be acceptable to them. It is from that practical point of view that I refrained from moving my amendment No. 324. We would prefer to wait for the time being when those who are at present inclined for various reasons and out of distrust and suspicion to take Bombay out of Maharashtra will by mutual agreement and co-operation, be willing to concede the natural thing *i.e.*, allow Bombay to remain where it is that is in Maharashtra. We do not want Maharashtra in the interests of the Maharashtrians alone; but we want it in the interests of the nation as a whole. There is absolutely no idea of any provincialism in it. Therefore so far as the question of Maharashtra is concerned, I would like to make it quite clear that I do not move my amendment

[Shri H. V. Pataskar]

No. 324 for the very simple reason that I find that in the present circumstance is not possible to have any province of Maharashtra.

The Honourable Shri Satyanaryan Sinha : Sir, the question may now be put.

Mr. President : The question is

“That the question be now put.”

The motion was adopted.

Mr. President : Would Dr. Ambedkar like to speak ?

The Honourable Dr. B. R. Ambedkar (Bombay : General) : I have nothing to say.

Mr. President : Then I will put the whole schedule to vote as there is no amendment later on.

Shri H. V. Kamath : Subject to the names of provinces being amended.

Mr. President : There is no question of it being “subject to.” As I have the matter will be referred to the Provinces and if we get any reply which necessitates any change we shall consider that at the time of the Third Reading.

The question is :

“That the First Schedule stand part of the Constitution.”

The motion was adopted.

The First Schedule was added to the Constitution.

Mr. President : Before we rise, we have to fix the time table. It was suggested in the morning by some Members that we should meet tomorrow. (*Cries of “No”, and “Yes”*).

Shrimati Annie Mascarene : Sir, are we to be impose upon by the tyranny of the majority party ?

Mr. President : I do not think the Honourable Member is justified in saying that. There is no question of tyranny by any majority. The only question is that of fixing a time-table and surely the time-table for going to the church can be adjusted to the time-table of the House. There is no difficulty in that. If the Members do not want to sit on a Sunday then it is a different matter.

Shri R. K. Sidhwa : If we are to finish the business in one day then I do not we why we should not sit tomorrow, Sunday.

Mr. President : We are not likely to finish in one day. Even if we sit tomorrow we may have to sit on Monday; and if we do not sit tomorrow, we may have to sit on Tuesday. Therefore, if the Members wish we can sit tomorrow. (*some Honourable Members* : “No, no”). Then I shall take a vote on this.

The question is :

“That the Assembly do meet tomorrow, Sunday.”

The Assembly divided by show of hands : Ayes : 41, Noes : 35.

The motion was adopted.

Mr. President : So we shall sit tomorrow.

The Assembly then adjourned till Ten of the Clock on Sunday, the 16th October 1949.

CONSTITUENT ASSEMBLY OF INDIA

Sunday, the 16th October 1949

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.

DRAFT CONSTITUTION—(Contd.)

Mr. President : We have got a number of articles on the agenda. Some of them are of a controversial nature and are of great importance. They will probably take a little time in discussion, while the others are more or less of a formal nature. I would like to take up the difficult and controversial articles first, so that we might dispose them of and then we can deal with those which are only consequential amendments and things of that sort. Shall we begin with 264A, Dr. Ambedkar ? Will it suit you ?

Mr. Naziruddin Ahmad (West Bengal : Muslim) : May I point out that these amendments were received by us at quarter past nine this morning and I had to read them on my way to the Assembly.

Mr. President : Quarter past nine ? They were circulated last night.

Some Honourable Members. : We got them at 9 A.M.

Shri Mahavir Tyagi (United Provinces : General) : My proposal is that this article may be taken up in the afternoon, Sir.

Mr. President : We may not have a session in the afternoon. In this way I do not know what to do.

Mr. Naziruddin Ahmad : These are very intricate matters and they are reopening decisions of the House already taken.

Mr. President : Article 264A has been there for several days, article 274DD has been there for several days; so also article 302AA.

Mr. Naziruddin Ahmad : I am speaking generally of the agenda today. Most of them reopen matters already decided by the House. It is difficult for anyone, even the fastest brain, to follow these changes. No indication is given as to what changes are to be made.

Mr. President : No doubt article 280A, I understand, is a new article which has come up today; but the others have been there on the agenda for many days.

Shri H. J. Khandekar (C.P. & Berar: General) : 264A is a new article altogether and we got notice of it at about 9 A.M. today. It is impossible to send any amendment to that article. Therefore, I request that it may be taken up in the afternoon or tomorrow.

Mr. President : It means that we shall have to prolong the session for two or three days. I do not think that will be right. Let us take up article 264A.

Article 264A

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Sir, I move amendment No. 425.

“That in amendment No. 307 of List XIII (Second Week), for the proposed article 264A, the following be substituted—

‘264A. (1) No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place—

Restriction as to imposition of tax on sale or purchase of goods.	(a) outside the State; or
	(b) in the course of the import of the goods into, or export of the goods out of the territory of India.

[The Honourable Dr. B. R. Ambedkar]

Explanation.—For the purposes of sub-clause (a) of this clause a sale or purchase shall be deemed to have taken place in the State in which the goods have actually been delivered as a direct result of such sale or purchase for the purpose of consumption in that State, notwithstanding the fact that under the general law relating to sale of goods the property in the goods has by reason of such sale or purchase passed in another State.

- (2) Except in so far as Parliament may by law otherwise provide, no law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase at any goods where such sale or purchase takes place in the course of inter-State trade or commerce :

Provided that the President may order by direct that any tax on the sale or purchase of goods which was being lawfully levied by the Government of any State immediately before the commencement of this Constitution shall, notwithstanding that the imposition of such tax is contrary to the provisions of this clause, continue to be levied until the thirty-first day of March, 1951.

- (3) No law made by the Legislature of a State imposing, or authorising the imposition of, a tax on the sale or purchase of any such goods as have been declared by Parliament by law to be essential for the life of the community shall have effect unless it has been reserved for the consideration of the President and has received his assent.' ”

Sir, as everyone knows, the sales tax has created a great deal of difficulty throughout India in the matter of freedom of trade and commerce. It has been found that the very many sales taxes which are levied by the various Provincial Governments either cut into goods which are the subject matter of imports or exports, or cut into what is called inter-State trade or commerce. It is agreed that this kind of chaos ought not to be allowed and that while the provinces may be free to levy the sales tax there ought to be some regulations whereby the sales tax levied by the provinces would be confined within the legitimate limits which are intended to be covered by the sales tax. It is, therefore, felt that there ought to be some specific provisions laying down certain limitations on the power of the provinces to levy sales tax.

The first thing that I would like to point out to the House is that there are certain provisions in this article 264A which are merely reproductions of the different parts of the Constitution. For instance, in sub-clause (1) of article 264A as proposed by me, sub-clause (b) is merely a reproduction of the article contained in the Constitution, the entry in the Legislative List that taxation of imports and exports shall be the exclusive province of the Central Government. Consequently so far as sub-clause (1) (b) is concerned there cannot be any dispute that this is in any sense an invasion of the right of provinces to levy as sales-tax.

Similarly, sub-clause (2) is merely a reproduction of Part XA which we recently passed dealing with provisions regarding inter-State trade and commerce. Therefore so far as sub-clause (2) is concerned there is really nothing new in it. It merely says that if any sales tax is imposed it shall not be in conflict with the provisions of Part XA.

With regard to sub-clause (3) it has also been agreed that there are certain commodities which are so essential for the life of the community throughout India that they should not be subject to sales tax by the province in which they are to be found. Therefore it was felt that if there was any such article which was essential for the life of the community throughout India, then it is necessary that, before the province concerned levies any tax upon such a commodity, the law made by the province should have the assent of the President, so that it would be possible for the President and the Central Government to see that no hardship is created by the particular levy proposed by a particular province.

The proviso to sub-clause (2) is also important and the attention of the House might be drawn to it. It is quite true that some of the sales taxes which have been levied by the provinces do not quite conform to the provisions contained in article 264A. They probably go beyond the provisions. It is therefore felt that when the rule of law as embodied in the Constitution comes into force all laws which are inconsistent with the provisions of the Constitution shall stand abrogated. On the date of the inauguration of the Constitution this might create a certain amount of financial difficulty or embarrassment to the different provinces which have got such taxes and on the proceeds of which their finances to a large extent are based. It is therefore proposed as an explanation to the general provisions of the Constitution that notwithstanding the inconsistently or any sales tax imposed by any province with the provisions of article 264A, such a law will continue in operation until the 31st day of March 1951, that is to say, we practically propose to give the provinces a few months more to make such adjustments as they can and must in order to bring their law into conformity with the provisions of this article.

I do not think any further explanation is necessary so far as my amendment is concerned but if any point is raised I shall be very glad to say something in reply to it when I reply to the debate.

(Amendment Nos. 426 and 427 were not moved).

Prof. Shibban Lal Saksena (United Provinces : General) : Sir, I move:

“That in amendment No. 425, in the Explanation to clause (1) of the proposed article 264A, the words ‘for the purpose of consumption in that State’ be deleted, and the following new clause be added at the end :—

- (4) The Union Parliament shall have power to amend the laws in respect of taxes on sale or purchase of goods with a view to bring uniformity in the laws made by the various States of the Union or in the interests of the Union as a whole, provided that no Bill for such amendment shall be moved in Parliament without the prior permission of the President, and the President before giving such permission shall obtain the views of the Governments of the various States concerned.’”

Sir, this amendment No. 425 is in modification of the original amendment No. 307. It is a bit more comprehensive and tries to deal with some of the objections which had been raised against that article. But I feel that the article even as moved by Dr. Ambedkar is very defective and will have the effect of reducing the income of several provinces by some crores of rupees. In fact I am told that the Central Provinces Government will lose about 1 crore and the Bihar Government about 2 crores. Probably the same will happen to other provinces also.

The principles that Dr. Ambedkar has placed before us are simple. First, on imports and exports to sales tax will be levied; secondly, on inter-State trade no sales tax will be levied; and thirdly, on essential articles of life no sales tax will be levied without the approval of the President. But in clause (1) restrictions are to be put on the power of the States to impose sales tax on articles meant for import and export even to the extent of one pice per maund or other small amounts. The result will be that many of the provinces will lose huge amounts of revenue. For example, the Premier of the Central Provinces was telling me that they export manganese and other mineral products from their State. Bihar exports mica and such other things. They impose a small amount like one or two pice per maund as sales tax. That brings to the coffers of the province a crore or so of rupees.

Now we have said that if these goods are meant for consumption in the State then alone this tax can be imposed, otherwise not; and this will result in the depletion of the finances of the provinces to very dangerous extent. I therefore think that these words “for the purpose of consumption in that State” should be removed and to make up for this depletion, I am suggesting, a new clause, which I read just now and which says : “The Union Parliament

[Prof. Shibban Lal Saksena]

shall have power to amend the laws in respect of taxes on sale or purchase of goods with a view to bring uniformity in the laws made by the various States of the Union or in the interests of the Union as a whole.” It may be argued that if this power is not kept here then many States shall levy taxes which would really amount to an excise tax or production tax in a way. What I want is only this, that when there are any such taxes which injure the Centre or which are injurious to trade, then this overall power given in clause (4) shall come into play and I also say that the President shall have the final power, so that the Centre will have the power to intervene, if necessary.

At the same time I do not want that this article 264A should cripple the provinces to such an extent that they will not be able to carry on their nation building activities such as Education etc. Therefore, this amendment of mine that is, removing the words “for the purpose of consumption in that State” and adding clause (4) will not injure the Centre in any way and will also let the State have some income. In fact in our discussions on the financial provisions States like Assam told us that they produce mineral oil, petroleum etc., but that they do not get anything. It was agreed in the Conference of Prime Ministers also that they can impose sales tax up to one pice and thus, they can have some revenue with which they can run their administration. It is only fair that province which produces an article should have at least some portion of that revenue. In fact, in my province, we produce sugar and although sugar is not taxed, we put a cess on sugar-cane and that brings to the province about a crore of rupees.

I do not think that such restrictions will help the Centre. But they will injure their main source of revenue. In fact in some provinces the revenues are much greater. I therefore, think that this article is an important article and it must be suitably amended, and I do not think that the provinces should be treated in such an unjust way as has been done by this article. If my amendment is accepted the Centre and the provinces will both benefit, and by deleting the words “for the purpose of consumption in that State” the Centre will not lose any money in import and export duties. I think that it is never the intention of any Provincial Government to usurp that function, and besides clause (4) will enable the Union Parliament to put limits on the amounts of sales tax they put and that will not affect the imports or exports and if a small tax it levied the Provinces will be able to benefit and it will be so good for them.

It is also unfair to the provinces that produce the main products such as petroleum or tea not to permit them any income there from. Now if Assam is allowed to have a small sales tax at the very beginning of one pice or two pice per maund, it will be able to have a large amount of money for their own province. Similarly, provinces like Bombay will have some money from the sales tax on the things produced therein and if these are uniform all over the country, the provinces will also gain and there will be no difficulty in inter-State trade and export and import. I think my amendments are very fair and something should be done to make provisions for these matters.

Shri Mahavir Tyagi : Sir, I beg to move:

“That in amendment No. 425 of List XVIII after clause (1) of article 264A, the following new proviso be inserted :

‘Provided that the sales tax shall not exceed Rs. 3/2 per cent of the sale price.’ ”

Sir, while moving this amendment, I wish to appeal to the sense of justice of this House in the name of the people whose representatives we are. This article from one point of view is extremely important. I deem this Constitution to be a contract between the State and the people. This contract has been given for drafting to the arbitration of the representatives of the people.

We should therefore not be guided, biased or prejudiced by the administrative difficulties, as may be pointed out by the honourable ministers, in various provinces; but we should take notice of the difficulties of the citizens at large. Constitution is a contract between the Citizen and the State; the main terms are, that the citizen shall pay such and such taxes whenever they be required by law to do so. This is the biggest liability which the citizens agree to take on themselves. On the one side, there are the citizens of India and on the other is Dr. Ambedkar, acting on behalf of the second contracting party, the State. He is already representing the State and puts the State's point of view. The state, through this Constitution takes over the responsibility of maintaining peace and enhancing the prosperity of the people. People being absent, I must appeal to the good sense of the representatives of those people, to be loyal to their clients and safeguard their interests in this supreme court of the nation. We are deciding their fate in their absence in this House.

When we allow the Provincial Governments to pick a pie from the private pocket of an individual citizen, we should see to it that it is obtained only willingly, and that every pie that we draw from the pocket of a private individual must ultimately go back to him either in the shape of services rendered to that individual or in the shape of an enhanced sum returned to him. Today in India hundreds of taxes are being realised, and the people do not really get any substantial benefit out of these taxes, either in the shape of additional 'prosperity' which they are told to expect from Government or any other kind of service. Whatever little service the State renders here in India is a further charge on the people. For instance, there are the railways which is an amenity given to people, but then it is run on a commercial basis and people are to pay for it. The telegraphs, the Post Office, the canals and everything else which go as services, we make extra charges for them. The State renders no free service to the people except a few dozes of quinine mixtures mixed with water that the State gives free to some poor people. Otherwise even doctors charge their fees and treat the people on payment. So we see that the State is not actually rendering any free service except that we are giving our citizens a psychological satisfaction to enjoy in their belief that they are a free people. They do not know what is the value of freedom. State justifies taxation on the plea that it defends the borders against wars. Wars never come alone, and when a war comes, it brings an extra tax along.

Now I submit that the taxes we get from the private individuals do not go back to them. If the Provincial Governments are permitted to realize sales tax, it is for them to see that they also enhance the prospects of commerce and bring about general prosperity among those people who are engaged in commerce. Now, what service do they render to the shop-keepers and those persons who, either purchase or sell ? They render no service to them. Have they created any new markets or given any facilities ? What for is this tax ? When various taxes were enumerated in the list of provincial subjects, it was considered that the sales tax was a sort of minor help to the provinces, for their revenues were static and there was no chance for raising them. The provinces mostly depended on their land revenue which is more or less fixed for a number of years. Therefore, with the increased activities of the provincial Governments it was thought better to give them some margin of extra revenue to balance their budgets.

Now, Sir, they got a little margin in the shape of this sales tax. As I see things, within a few years, the situation is totally changed. The sales tax is becoming a major source of revenue, even bigger than what their main sources of revenue used to be. In my province, previous to the war, the total revenue was hardly 13 crores or so; now, it is nearing 55 crores. These other taxes which the provinces have levied, over and above their main source of revenue are also taxes from the same people.

[Shri Mahavir Tyagi]

Now, Sir, the incidence of taxation is the heaviest in India. India had never faced even in times of war, such an incidence of taxation as it is bearing today. And, the Governments are rendering the least service in exchange for these taxes. This House is the highest authority vested with all powers of Sovereignty; we are sitting as the Supreme Court to decide whether we can permit the provincial Governments to go on taxing the people without any ceiling limits. Because there is no ceiling limit on this sales tax, they can go on raising the tax and ultimately there may come a time when the people may not be in a position to give much, and our taxes in the Centre would consequently be adversely affected. If the provincial Governments go on raising their taxes at the present speed, the result would be that total paying capacity of the people would be exploited by provincial Governments and the Central Government would thereby suffer. My point is that if we do not fix a limit, the provincial Governments would go on taxing, and we would be doing sheer injustice to the people who are at our mercy and who will have no right to protest or withhold these taxes. They would only have to draw solace from the fact that they were after all being taxed by the persons for whom they had voted. This is "ballot box democracy," which will tell in that manner on the people. I therefore, submit, Sir, that a limit of six pies per Rupee which comes to Rs. 3-2-0 per cent. should be fixed so that the provinces may not enhance the rate of this tax.

Again, I want to fix a limit also from another point of view. What I say is that in spite of the budgets of the various provinces having been inflated too much they are not rendering more service to the people than what the old Governments used to do. The result is that though they are freely inflating their budgets with the help of this liberty of raising taxes, they are doing nothing to reduce their expenditure, there is no tendency in any province to reduce the expenditure. The expenses today are more than what they used to be during the times of war. I say war was an emergency and they had temporarily to raise the taxes. Sir, it was foreign rule then. But now it is the people's government. Even though war is finished, the provincial governments have not begun to reduce their expenditure. Most of their income is going towards revenue expenditure and no portion of it is devoted towards the capital expenditure which is meant to enrich the people. If the money was spent in capital investments, I could have understood. Very little of the revenue expenditure is going towards capital expenditure. Whenever any money is invested in capital expenditure, it is obtained by borrowing.

Therefore, Sir, they are not only depleting the resources of the provinces, but also encumbering the citizens. I therefore, submit if in this manner, the provinces are given full opportunity to go on encumbering the position of the citizens in the provinces, it will tell upon the prosperity of the country as a whole. Therefore, while we are deciding between the citizens and the States, we must also define the limits to which the taxation of the provinces can go. With these words, I appeal, without any consideration to our party labels and prejudices, to the provincial Governments, that we, sitting as the judges of the nation, must do justice unimpaired, unprejudiced, fair and balanced to the citizens who are not here. They must be given full justice.

There are so many defects in the present system of sales tax. Now, in Delhi, there is no sales tax; in the United Provinces, there is a sales tax on motor cars, radios, on bicycles and other things. Whenever any citizen in Meerut wants a motor car or a bicycle, he does not go to the local shop there. The local agency suffers. He comes to Delhi. I see Dr. Ambedkar beckoning me to keep quiet; he is using undue influence.

The Honourable Dr. B. R. Ambedkar : I have followed the point.

Shri Mahavir Tyagi : Have you followed it ? Have you also appreciated it ? Are you prepared to accommodate me ? You have got the delegates of the People behind you. Dr. Ambedkar, I can assure you, if you are just, if you recognise justice, you might become later on the Supreme Judge of India in your life, if you do justice to the citizen. I submit, Sir, this is the manner in which this tax is being levied. In one State there is a tax of two annas per Rupee in another State there is a tax of two pies per Rupee. In one State the sale is taken at one point only; in another State it is taken at so many points wherever there is a sale. Like the gamblers' den, whoever is playing, he has something to pay to the gamblers' pool. In this manner, the provinces are running after every sale. This is something which is tending to become a blind law.

I submit that this is a very serious matter. It would be better if Dr. Ambedkar would reconsider the whole article and make it a 'uniform tax' and put it in the hands of the Central Government. The best thing would have been for the Central Government to enact a law so that the provinces would have a uniform pattern of taxation and the tax would be realised at one single point and in relation to one single commodity. A commodity should not be taxed at every point whenever it is put up for sale. With these words, Sir, I hope the House, 'not caring for the mandates or labels (लेबल) that they might have received from their houses, will please do justice and speak freely and vote freely in the matter and guard the rights of the citizens.

Mr. President : There are some more amendments which relate to the article as it was originally proposed. I do not know if all the amendments arise; but there is one which certainly can be moved. Amendment No. 385, Mr. Ajit Prasad Jain.

Shri Amiyo Kumar Ghosh (Bihar : General) : I have got amendment No. 383, standing in my name.

Mr. President : Let me see first amendment No. 385.

(Amendment 385 was not moved).

Mr. President : Do you want to move amendment No. 383 ?

Shri Amiyo Kumar Ghosh : Yes, Sir.

Mr. President : Just show how it fits in with this now.

Shri Amiyo Kumar Ghosh : Mr. President, Sir, of course my amendment No. 383 was tabled against amendment No. 307, that is to say, to article 264-A as it originally stood but today another amendment to that amendment has been moved which does not change the original position in the least except that an explanation has been added to the previous article, to clear certain minor points. So it fits in with the amendment moved just now by Dr. Ambedkar. So I move my amendment:

"That in amendment No. 307 of List XIII (Second Week) clause (2) of the proposed new article 264A be deleted."

What I want by this amendment is this, that clause (2) which deals with inter-State trade and commerce and gives an exemption to such transactions from sales tax, should be deleted. As a matter of fact, my clear impression is that this Constitution though in form is Federal, is in essence a Unitary Constitution. In this Constitution all powers and all sources of finance have been taken away by the Centre and the provinces have been left without any resources of their own. As a matter of fact the Union has been so much over-loaded that it may break at its own weight. It is said that we have got provincial autonomy, I assert that the provincial autonomy we have under this Constitution is worse than what it was in 1935 Act. Coming to the

[Shri Amiyo Kumar Ghosh]

question the only source of taxation which the provinces have in this Constitution is the sales tax. But that power has been taken away by this new article 264A to a great extent.

Now I will particularly speak with reference to the province of Bihar because I am not acquainted with the sales tax position prevailing in other provinces. So far as Bihar is concerned, I must emphatically assert that if this new article 264A is allowed to stand, the Province will lose immediately an income of more than 2 crores of rupees. In Bihar the income per capita and consequently its expenditure per capita is the lowest in the whole of India the reason being that hitherto its financial resources were inelastic. It has got fixed income in land revenue. In other provinces like U.P., Madras and Bombay the land revenue is a progressive one but in Bihar, due to Permanent Settlement, the income from this land is rigid, being something less than 2 crores.

Then there is another source of income from excise, but if prohibition is to be carried out, the province is going to lose $5\frac{1}{2}$ crores out of its present revenue and there is no other source of revenue left to Bihar except sales tax to implement the loss that the province will sustain by the introduction of prohibition. This sales tax was the only elastic taxation left in the hands of the States to increase their revenue but that too is now taken away. Bihar has great resources but in spite of her holding rich position, she is one of the poorest province in India. Today 75 percent. of the coal and iron consumption of India is supplied by Bihar. Besides these, there are other commodities like sugar, cement, chillies, tobacco etc. which go out of Bihar; but if this provision is allowed to stand, the result will be that Bihar will not be entitled to any tax on these commodities at all, and will not derive any benefit from her own wealth. This article also closes the door of future implementation of the income for all times.

It is therefore only fair that Bihar which produced iron, coal etc. with the labour of the province and has to spend lots of money over maintaining law and order in those industrial areas—should be allowed to have an income out of them. It is understandable if some such clause is put into the effect that a uniform taxation will be levied on all such commodities that go out of any province and a position of such taxation will go to the province which produce them and the balance to the province where it is consumed. Under the present article 264A all the coal, iron and other commodities will leave the boundaries of Bihar, the Province will have no hand to tax them at all—a position which is very unfair to the Province. This will tell very heavily upon the financial resources of the province.

The State Governments are primarily responsible to the people and morally obliged to carry out so many social welfare programmes. They are to maintain law and order which requires huge expenditure. They are to eradicate want, ignorance, disease and unemployment. How to discharge these obligations? All these works require spending and doing. But where from to spend if there is no income ?

So, I submit that this is a clause which falls very heavily upon all provinces, particularly Bihar, and I would request the Drafting Committee to reconsider the subject over again. Everyday Provinces are being saddled with new responsibilities and if they have to discharge them, it will require

large money more money. The situation in the country is such that expenses on police and other administrative matters are mounting. Where from can these be met if we have no financial resources of our own ?

So, I oppose this Article 264A and I submit that so far as inter-State trade and commerce are concerned, they should not be exempted from sales tax and altogether deprive a province from such an important source of income. The benefit of this article goes wholly to the big businessmen who always evade paying taxes but is of no relief to the petty-businessmen and the consumers. If the power of imposing sales tax is abrogated in such a manner then it is better to liquidate the States altogether. If you want to maintain the States, you should not reduce them to the position of orphans with a begging bowl in hand approaching the Union Government for money and help. They must be given to stand on their own legs and must be allowed some resources where from they can implement their various plans into action. A healthy State means a strong Union.

Then, Sir, in this new article, it is said—

No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place—

- (b) in the course of the import of the goods into, or export of the goods out of the territory of India.

Now, this gives a great loop-hole to the business-men to escape taxation. In all cases of export, there are various transactions before the commodity is actually exported from the country. But under this clause, all these transactions—the intermediate transactions which take place—are exempted from sales-tax. I could have understood the position if it was that at the point of export, that is to say, the last transaction, where from it is actually exported, the sales-tax will not be realisable at that point. But this clause as it stands means that all transactions that take place in the course of sending the goods outside the territory of India will be exempted from sales-tax. Now, how can you check the nature of these transactions ? A buys a commodity saying that he will export it. But he does not export it, but, sells to B, and B purchases it saying that he will export it, and in this manner the commodity passes on from one hand to other and from one province to another without payment of any tax, and it may be that in the end it is not exported at all. How can you check up this process ? There will be a lot of difficulty and confusion, if this clause is passed as it stands. So my humble submission is that there, export and import should be clearly defined, and we must say that export means the last transaction and import means the first transaction, and only at the point of these two transactions commodities will be exempted from sales tax, and at no other point.

With these words, Sir, I commend my amendment for the acceptance of the House.

Mr. President : Dr. Kunzru, do you want to move an amendment to this article ?

Pandit Hirday Nath Kunzru (United Provinces : General) Yes, Sir, but my amendment is being typed and I hope it will be ready very soon. I hope you will kindly give me a little time to.....

Mr. President : Well, you may move it later and in the meantime we may have some discussion.

Shri Jagat Narain Lal.

Shri Jagat Narain Lal : (Bihar : General) Sir, I have tabled no amendment, nor do I purpose to press for the support of any amendment that has been moved here. But all the same, I do want to make a suggestion to the Mover of this article 264A, to take into consideration certain views which are strongly held and which are being felt by a fairly large section of the House, for reasons many of which have already been expressed here.

There is no disagreement on the question of not allowing the States to tax imports or exports as such. But it has been already said by the some previous Members, and I have got to repeat it, that unless the words are properly clarified, the words “in the course of” which occur in sub-clause (b) of clause (1) are bound to create a good deal of confusion. It has been pointed out that the Supreme Court of the U.S.A. had arrived at certain decisions with regard to this question which have clarified the position. We want for various reasons that these words should go.’ I would suggest that they be replaced by the words “at the initial stage of import into” and “at the ultimate stage of export out of India”. I suggest that these words that I have suggested may be kept, for the simple reason, firstly, that that will eliminate confusion, and secondly, the difficulties which would be felt in taxing the goods which pass from hand to hand until a part of them is exported out of this country, would be eliminated. Otherwise, there will be a good deal of confusion and a good deal of difficulty.

Some of the previous speakers have already pointed out the difficulties which will be felt by Provinces like Bihar, and C.P. if the words “for the purpose of consumption in that State” in sub-clause (1) are retained, and I do not want to repeat those arguments. But I do want to point out that in the absence of certain very important sources of revenue which we do want, on account of the programmes which the Congress has chalked out—say for prohibition and so on—and sales tax is a very important source of revenue and an expanding source of revenue. While the Centre is in no way hit and is in no way affected, there is no point in saying that the Provinces where big manufactures go on, and very large-scale production goes on, like iron, sugar, coal, cement and so on should not tax the sale of those commodities in or outside the province. So I want that the words “for the purpose of consumption in that State” should go out. Otherwise, the proviso which has been provided to sub-clause (2) where it is said that they may continue to be levied for one year, should go, and they should continue to be levied as before.

These are the few suggestions which I want to make to the Mover of this article. I do not want it to be pressed in the form of an amendment, but I leave it to the good sense of the Mover. There is neither the desire that the Centre should be crippled, that the Federal Government should be crippled by being deprived of taxes or the power to tax, nor should there be any desire on the part of the Federal Government—and I hope there is none—that the States should be crippled. Both should work harmoniously. Both are inter-related, as on the safety and welfare of the Federal Government and of the States, the safety and welfare of the entire country rests. Therefore, Sir, I appeal to the Mover of this article to take into consideration these two suggestions and to make such alterations or modifications as may be acceptable to the entire House and there may be no feeling of resentment or the feeling that the difficulties of the States have not been fully taken into consideration. I do not want to add more to what has already been said.

Pandit Hirday Nath Kunzru : Mr. President, Sir, I beg to move:—

“That after clause (1) of article 264A, the following new clauses be inserted:—

- ‘(1a). No law of a State shall impose or authorise the imposition of a tax on the sale or purchase of goods within a State except where such sale or purchase is made to or by a consumer.
- (1b) Parliament may, by law, fix the maximum rate at which a sale tax may be levied by a State on the sale or purchase of goods.’ ”

Sir, the amendment placed before the House by Dr. Ambedkar prevents a State from levying sales taxes on imports and exports. It thus protects the interests of the Central Government. The amendment also prevents the State from imposing sales taxes on goods bought or purchased in the course of inter-State trading. It thus protects also the interests of the State in which the goods are ultimately to be sold. But except in a limited way, it does not protect the interests of the consumers. Clause (3) of the amendment moved by Dr. Ambedkar says, that no tax on the sale or purchase of any essential goods declared by the Central Government to be essential for the life of the community, shall be levied by a Legislature, unless the law imposing the tax has been reserved for the consideration of the President and has received his assent.

This amendment protects the interests of the consumers too, but only in respect of those articles that are declared by the Central Government to be essential to the life of the community. It will depend on the Central Government what goods it will include in this category from time to time. It is therefore desirable that something more should be done to protect the interests of the consumer.

In many provinces, Sir, the sales taxes are levied only when the goods pass to the consumer. But it is not so in all provinces, nor is there a limit to the rate of the tax. I think it is desirable in the interests of the public at large that the Constitution should take account of these points.

The first part of my amendment requires that a tax on the sale or purchase of goods should be levied only when the sale or purchase is made to or by a consumer. The second part of my amendment authorises Parliament to fix the maximum rate at which such a tax may be levied. It may be said that the general economic condition of the people will impose a limit on the power of the Government of any State to fix the rate of the sales tax. It is very difficult in the first place to determine what the economic rate should be. In the second place, if the rate is to be determined only by experience, that is by following the method of trial and error, the proceeds of a tax may be large in the case of a particular commodity, but, on the other hand the sale of some other commodity might go down. The matter cannot therefore be left to be judged entirely by the Finance Minister of a State. It is important enough to require to be dealt with at this stage.

In some of the countries, there are multiple-point sales taxes. Perhaps the economic condition of those countries permits of the imposition of such taxes. But, in India, particularly at the present time when prices are high, obviously it is undesirable that each of the processes that has to be gone through before the manufactured goods reach the hands of a consumer should be subjected to the payment of a tax on the sale or purchase of goods. I think it will be generally agreed that it is desirable that some restriction should be placed on the power of a State in this respect. And even where such a restriction has been imposed, it is desirable that the Parliament should have the power to prescribe the upper limit of the tax.

[Pandit Hirday Nath Kunzru]

Several speakers have complained of the burdensome character of the sales taxes that have to be paid at present. That shows that the Governments concerned have not been able to adjust the rates in such a way as to create a sense of contentment among the consumers. Something more is, therefore, obviously required to be done. All that need be done in this connection is that Parliament should be given the power of fixing the upper limit where this may be necessary. It may not do so in every case. It may not do so in the case of luxury goods; but it may have to do so in the case of goods which, though not absolutely necessary for the satisfaction of our primary needs, are nevertheless in such general demand that it will be a hardship to the people to go without them.

Sir, I think that what I have said sufficiently explains the purpose of my amendment and shows that the amendment is such as to meet with the approval of the House. As I have already said, the amendment placed by Dr. Ambedkar before the House fully protects the interests of the Central Government and the interests of the State in which the goods purchased in another State are to be sold. But it only protects partially the interests of the consumer. My amendment seeks only to give as full protection to the consumer as Dr. Ambedkar's amendment has given to the interests of the Central Government and those of the State in which the goods purchased are ultimately to be sold.

Shri B. M. Gupte (Bombay : General) : Mr. President, Sir, I am sorry I have to express my dissatisfaction at clause (2) as it stands just now. My grievance is that it does not take into adequate account the difficulties of the provincial governments. Ours is a welfare State and it is bound to be more and more so as time rolls on, but most of the welfare work falls to the share of the provinces and the local bodies. The lower we go down the units of administration, the closer they come into contact with the daily needs of the people, and even today the Provincial Governments are hard put to it to meet their responsibilities with regard to what are called nation-building activities. And in the case of some of the provinces their difficulties are accentuated by the merger of States.

Take, for instance, the case of the province to which I have the honour to belong, *viz.*, Bombay. Today Bombay is facing the prospect of heavy deficits in its budgets for some years to come at least; and at such a time, instead of affording more sources of revenue to them we are clamping restrictions on the sources already available to them. Now, the sales tax is the most important and perhaps the most elastic source of revenue, and if we affect the income from that source, how will they meet their deficits? The provincial governments proposed that the provinces and the Centre should sit round a table, take stock of the whole situation and arrive at some arrangement for a more equitable distribution of the financial resources of the country and if there was not enough to go round, for a more equitable sharing of the financial difficulties.

The report of the Expert Finance Committee appointed by you, Sir, was an admirable opportunity for that purpose; but the Drafting Committee shelved the consideration of that report, maintained the *status quo* and provided for the appointment of a Finance Commission within two years of the commencement of the Constitution. There may be very good reason for that. I do not challenge that, but my point is that those good reasons should apply equally to the imposition of these restrictions. If the financial adjustment could wait, then certainly the imposition of these restrictions also could wait. After all, the question is not whether these restrictions are proper—they may be proper—but whether we are justified in imposing these restrictions without

making any compensatory sources available to the provinces. In the absence of such sources of revenue, what will the provinces do ? They will always look to the Centre for grants and we will be making the provincial Finance Ministers a crowd of unfortunate beggars on the doorsteps of the Central Finance Minister. I do not think this is a very desirable position.

I am glad one concession is made in the provision. That concession is that the present arrangement might continue up to the 31st March 1951 My point is that it would have been better if this period had been extended up to the time when the First Finance Commission will have made the necessary adjustments in the financial relations between the provinces and the Centre. We could certainly have waited till then. That would be only three years instead of one and a half years, which is a very small matter. Otherwise, I feel that there is bound to be a dislocation in the financial structure of the provinces. It must be remembered that the Centre cannot remain unaffected by the effects of that dislocation.

After all, the Centre and the Provinces are parts of one integrated whole. Take, for instance, the case of sugar at present. The Central Government passed a freezing order at Delhi, but the looting and shooting took place in Calcutta and Bombay. Let us therefore remember that any discontent arising out of the financial difficulties of the provinces would ultimately detract from the strength of the Centre, however strong that Centre may be. And as I have once said, a strong Centre cannot be sustained on weak units.

Shri Prabhu Dayal Himatsingka (West Bengal : General) : Sir, I beg to support the amendment moved by Dr. Ambedkar for the incorporation of article 264A. The article is framed to meet a number of difficulties and in the circumstances appears to be the best. I personally would have liked if the Centre had been authorised to impose the tax, collect it at the source,—at the import or the production centres,—and distribute the collections to the provinces. That would have reduced the number of points where expenditure has to be incurred in keeping books of account, but as the provincial governments did not agree to the Centre imposing the tax and then distributing it, the article as now proposed is the best. It seeks to do away with certain anomalies, which exist in the legislation of certain provinces where tax is imposed on sale, even though the article is delivered or consumed in another province. Similarly, it will do away with the tax on certain articles which are produced in one province but are sent to other provinces, that is to say in the course of inter-State transactions. At the present moment, Sir, I know of two cases where taxes have been imposed in Bengal to the extent of 25 lakhs of rupees on a mill which is situated in Orissa. Even though the goods were sold in provinces other than Bengal, still Bengal imposed an amount of twenty-five lakhs of rupees as taxes, simply because the company's head quarters happens, to be in Bengal. The present section will do away and remove such taxes being levied in such cases where the sales take place outside the province.

So far as the suggestion made by Pandit Hirday Nath Kunzru is concerned Bengal has met the difficulty already because it has introduced what is called registered dealers. When a sale takes place between two registered dealers, no sales tax is realised. When a sale takes place to a person who is not a registered dealer, then and then only is the tax realised; and therefore it is presumed that a man who is not a registered dealer is taking it for purposes of consumption. So, Bengal has met this difficulty by making registration necessary in the case of those who do not want to pay any taxes on their purchases.

[Shri Prabhu Dayal Himatsingka]

I support the article as moved by Dr. Ambedkar. Certain apprehensions have been expressed by different provinces, but I do not see that there is any justification for the same. They ought to know that they will be safe because there are a number of articles produced in each province which are exported for consumption in other provinces. Similarly, they ought to know that there are a number of things which come to the different provinces for consumption. Take, for instance, the case of cloth from Bombay. When cloth goes out from Bombay, they are prevented from imposing any sales tax, and Bihar which is importing a lot of cloth from Bombay will be able to realise the tax from such cloth. Therefore, ultimately, they will adjust in such a manner that all the provinces will practically get what they have been getting now. The thing will adjust itself in the course of a year or two, and none of the provinces will stand to lose anything but at the same time, the whole procedure will be simplified. I therefore support the article as moved by Dr. Ambedkar.

Shri Gopal Narain (United Provinces : General) : Mr. President, Sir, I have risen to support the amendment of my Friend Shri Mahavir Tyagi. He has struck the right note. In levying a tax or in introducing a measure of taxation the first consideration should be whether it is in the interests of the people. We have to see when we introduce a tax that it will be spent in the interests of the people, the masses. It is argued that we have introduced prohibition and so this new tax is required to make up the deficit in that direction. In my own Province only in eight districts we have introduced prohibition and that too is not successful. This is not prohibition in any sense.

Why do we need such taxation ? I may say, Sir, that it is due to the top-heavy expenditure that we are introducing new measures of taxation. We are not economising in that direction in the Centre and in the Provinces. We find that Economy Committees have been established and have submitted their reports. In my own Province they have submitted a report that we should lessen our expenditure by Rs. 6 crores, and out of that six crores I found that four crores are from the capital expenditure for roads and buildings and two crores from other directions. This is not sufficient. Before levying this new taxation we should have an economy drive in the Centre and in the Provinces. We are not doing any good to the masses but are burdening them with taxation. My Friend Mr. Tyagi has drawn the attention of the House in this very direction. He has said that we must see if this taxation will do any good to the people at large. I think they are being burdened unnecessarily on account of the huge expenditure in the administration of the Government. We should curtail it first and then we should think of introducing this taxation.

I will say one thing more. As for the amendment of Dr. Ambedkar, there is some discrimination in it. Some provinces will suffer by that. The U.P., Bihar and the C.P. will be the greatest sufferers by that amendment. I think there should be no discrimination as between Province and Province. All the Provinces, if they have to suffer, should suffer equally. It may not be beneficial to one Province while the other Province have to suffer, I would appeal to Dr. Ambedkar to accept the amendment of Mr. Tyagi.

With these few words, I support the amendment moved by Shri Mahavir Tyagi.

Shri Yudhisthir Mirsa (Orissa States) : Sir, the question be now put.

Several Honourable Members : No, no.

Shri Mahavir Tyagi : You kindly exercise your discretion, Sir, the matter is very important.

Mr. President : You have already spoken and you will have, no chance again. I have to put the closure motion to vote.

The question is :

“That the question be now put.”

The motion was adopted.

The Honourable Dr. B. R. Ambedkar : Sir, there are three amendments before the House. The first is the amendment of my Friend Prof. Shibban Lal Saxena. According to his amendment, what he proposes is that the power practically to levy sales tax should be with the Parliament. There are two fundamental objections to this proposal. In the first place, this matter was canvassed at various times between the Provincial Premiers and the Finance Department of the Government of India in which the proposal was made that in order to remove the difficulties that arise in the levy of the sales tax it would be better if the tax was levied and collected by the Centre and distributed among the Provinces either according to some accepted principles or on the basis of a report made by some Commission. Fortunately or unfortunately, the Provincial Premiers were to a man opposed to this principle and I think, Sir, that their decision was right from my point of view.

Although I am prepared to say that the financial system which has been laid down in the scheme of the Draft Constitution is better than any other financial system that I know of. I think it must be said that it suffers from one defect. That defect is that the Provinces are very largely dependent for their resources upon the grants made to them by the Centre. As well as know, one of the methods by which a responsible Government works in the power vested in the Legislature to throw out a Money Bill. Under the scheme that we have proposed; a Money Bill in the Province must be of a very meagre sort. The taxes that they could directly levy are of a very minor character and the Legislature may not be in a position to use this usual method of recording its “no confidence” in the Government by refusing taxes. I think, therefore, that while a large number of resources on which the Provinces depend have been concentrated in the Centre, it is from the point of view of constitutional government desirable at least to leave one important source of revenue with the Provinces. Therefore, I think that the proposal to leave the sales tax in the hands of the Provinces, from that point of view, is a very Justifiable thing. That being so, I think the amendment of my Friend Prof. Shibban Lal Saxena falls to the ground.

With regard to the amendment of my Friend Mr. Tyagi, I would like to say that I am in great sympathy with what he has said. There is no doubt about it that the sales tax when it began in 1937 was an insignificant source of revenue I have examined the figures so far as Bombay and Madras are concerned. The tax in the year 1937 in Madras was somewhere about Rs. 2.35 crores. Today it is very nearly Rs. 14 crores. With regard to Bombay the same is the situation, namely, that the tax about Rs. 3.5 crores in 1937 and today it is somewhere in the neighbourhood of Rs. 14 crores. This must be admitted as a very enormous increase and I do not think that it is desirable to play with the sales tax for the purpose of raising revenue for the simple reason that a taxation system can be altered on the basis, so far as I know, of two principles. One is the largest equity between the different classes. If one class is taxed more than another class it is justifiable to employ the taxation system to equalise the burden.

The second important principle, which, I think, is accepted all over the world is that no taxation system should be so manipulated as to lower the standard of living of the people, and I have not the slightest doubt in my mind that the sales tax has a very intimate connection with the standard of living

[The Honourable Dr. B. R. Ambedkar]

of the people of the province. But, with all the sympathy that I have with my friend, I again find that if his amendment was accepted it would mean that the power of the provinces to levy the sales tax would not be free and unfettered. It would be subject to a ceiling fixed by Parliament. It seems to me that if we permit the sales tax to be levied by the provinces, then the provinces must be free to adjust the rate of the sales tax to the changing situation of the province, and, therefore, a ceiling from the Centre would be a great handicap in the working of the sales tax. I have no doubt that my Friend Mr. Tyagi, if he goes into the Provincial Legislature, will carry his ideas through by telling the Provincial Governments that the sales tax has an important effect on the standard of living of the people, and therefore, they ought to be very careful as to where they fix the pitch.

Shri Mahavir Tyagi : Have I become so inconvenient to you?

The Honourable Dr. B. R. Ambedkar : Not at all. If I were a Premier, I would have taken the same attitude as you have taken.

Now, coming to the amendment of my honourable Friend Pandit Kunzru, I am inclined to think that the purpose of his amendment is practically carried out in the explanation to sub-clause (1) where also we have emphasised the fact that the sales tax in its fundamental character must be a tax on consumption and I do not think that his amendment is going to improve matters very much.

There is only one point, I think, about which I should like to say a word. There after I know, some friends who do not like the phraseology in sub-clause (1), in so far as it applies, "in the course of export and in the course of import". Now, the Drafting Committee has spent a great deal of time in order to choose the exact phraseology. So far as they are concerned, they are satisfied that the phraseology is as good as could be invented. But I am prepared to say that the Drafting Committee will further examine this particular phraseology in order to see whether some other phraseology could not be substituted, so as to remove the point of criticism which has been levelled against this part of the article. Sir, I hope the House will now accept the amendment.

Mr. President : Before putting the proposition moved by Dr. Ambedkar to vote, I desire to say a few words, particularly because I see in front of me the Honourable the Finance Minister. I do not wish to say anything either in support of or in opposition to the article which has been moved, but I desire to point out that there is a considerable feeling in the provinces that their sources of revenue have been curtailed a great deal, and also, particularly among the provinces, which are poor, that the distribution of the income-tax is not such as to give them satisfaction. I desire to ask the Finance Minister to bear this in mind when he comes to consider the question of the distribution of the income-tax, so that it may not be said that the policy of the Government of India is such as to give more to those who have much and to take away the little from those who have little.

I shall now put the various amendments to vote.

The question is :

"That in amendment No. 307 of List XIII (Second Week), clause (2) of the proposed new article 264A be deleted".

The amendment was negatived.

Mr. President : The question is :

“That in amendment No. 425, in the Explanation to clause (1) of the proposed article 264A, the words ‘for the purpose of consumption in that State’ be deleted, and the following new clause be added at the end :—

- ‘(4) The Union Parliament shall have power to amend the laws in respect of taxes on sale or purchase of goods with a view to bring uniformity in the laws made by the various States of the Union or in the interests of the Union as a whole, provided that no Bill for such amendment shall be moved in Parliament without the prior permission of the President, and the President before giving such permission shall obtain the views of the Governments of the various States concerned.’ ”

The amendment was negatived.

Mr. President : The question is :

“That in amendment No. 425 of List XVIII after clause (1) of article 264A, the following new proviso be inserted —

- ‘Provided that the sales tax shall not exceed Rs. 3/2/- per cent of the sale price.’ ”

The amendment was negatived.

Mr. President : The question is:

“That after clause (1) of article 264, the following new clauses be inserted:—

- ‘(1a) No law of a State shall impose or authorise the imposition of a tax on the sale or purchase of goods within a State except where such sale or purchase is made to or by a consumer.
(1b) Parliament may, by law, fix the maximum rate at which a sale tax may be levied by a State on the sale or purchase of goods.’ ”

The amendment was negatived.

Mr. President : Then I put the original proposition moved by Dr. Ambedkar. The question is :

“That in amendment No. 307 of List XIII (Second Week), for the proposed article 264A, the following be substituted—

‘264-A. (1) No law of a State shall impose or authorise the imposition of, a tax on the sale or purchase Restrictions as to imposition of goods where such sale or purchase takes place—
of tax on the sale or purchase
of goods.

- (a) outside the State; or
(b) in the course of the import of the goods into, or export of the goods out of, the territory of India.

Explanation.—For the purposes of sub-clause (a) of this clause a sale or purchase shall be deemed to have taken place in the State in which the goods have actually been delivered as a direct result of such sale or purchase for the purpose of consumption in that State, notwithstanding the fact that under the general law relating to sale of goods the property in the goods has by reason of such sale or purchase passed in another State.

- (2) Except in so far as Parliament may by law otherwise provide, no law of a State shall impose, or authorise, the imposition of, a tax on the sale or purchase of any goods where such sale or purchase takes place in the course of inter-State trade or commerce.

Provided that the President may by order direct that any tax on the sale or purchase of goods which was being lawfully levied by the Government of any State immediately before the commencement of this Constitution shall, notwithstanding that the imposition of such tax is contrary to the provisions of this clause, continue to be levied until the thirty-first day of March, 1951.

- (3) No law made by the Legislature of a State imposing, or authorising the imposition of, a tax on the sale or purchase of any such goods as have been declared by Parliament by law to be essential for the life of the community shall have effect unless it has been reserved for the consideration of the President and has received his assent.’ “

The amendment was adopted.

Article 264-A, as amended, was added to the Constitution.

The Honourable Dr. B. R. Ambedkar : I would like you to take up article 280-A.

Pandit Hirday Nath Kunzru : I strongly object to that article being taken up today. I received the amendment only this morning. The matter with which it deals is a very important one and we should be allowed some time to consider it and to put forward amendments, if we want to do so.

Mr. Naziruddin Ahmad : In addition, this article proposes to introduce a new kind of emergency unknown in any system.

The Honourable Dr. B. R. Ambedkar : Sir, I hope you will not allow these technicalities to stand in the way of the business of the House. Now, even if the honourable Member got the amendment at nine o'clock, from nine to twelve he had time. I do not think there is anything obscure in this amendment. A man of much less intelligence than my honourable Friend Pandit Kunzru could understand it on first reading. I have no doubt about it.

Pandit Hirday Nath Kunzru : Sir, it is a very important matter and Dr. Ambedkar's impatience and rudeness should not be allowed to override the rights of the Members—rights which they clearly enjoy under the rules. I demand, Sir, that we should be given more time to consider this amendment notwithstanding the obvious desire of Dr. Ambedkar to rush the amendment through the House.

Mr. President : I would suggest that we go in the order in which it is on the agenda and take up article 274DD.

The Honourable Dr. B. R. Ambedkar : I am prepared to do that, Sir, but I must say that we are so much pressed for time that I do not think that these technicalities ought to be given more importance than they deserve.

Pandit Hirday Nath Kunzru : It is a pity that the Chairman of the Drafting, Committee, who by virtue of his position may be supposed to appreciate the rights of others, makes light of them.

Article 274-DD

The Honourable Dr. B. R. Ambedkar : Sir, I move:

“That with reference to amendment No. 400 of List XVII (Second Week), after article 274D, the following article be inserted :—

‘274DD. Notwithstanding anything contained in the foregoing provisions of this Part or in any other provisions of this Constitution, any State which before the commencement of Power of certain States in Part III of the First schedule in impose restrictions on trade and commerce by the levy of certain taxes and duties on the import of goods into or the export of goods from such States. this Constitution was levying any tax or duty on the import of goods into the State from other States or on the export of goods from the State to other States may, if an agreement in that behalf has been entered into between the Government of India and the Government of that State, continue to levy and collect such tax or duty subject to the terms of such agreement and for such period not exceeding ten years from the commencement of this Constitution as may be specified in the agreement :

Provided that the President may at any time after the expiration of five years from such commencement terminate or modify any such agreement if, after consideration of the report of the Finance Commission constituted under article 260 of this Constitution, he thinks it necessary to do so.’”

Sir, this new article is a mere consequential amendment to article 258, which the House has already accepted, whereby the power is given to the Government of India to enter into agreement with States in Part III for the purposes of making certain financial adjustments during a temporary period.

Prof. Shibban Lal Saksena : Sir, I move:

That in amendment No. 428, in the proviso to the proposed article 274DD, for the word 'President', the word 'Parliament' be substituted, and for the words 'he thinks', the words 'it thinks' be substituted."

I only want that in matters of financial agreement with the States the Parliament should be the authority and not the President.

Shri T. T. Krishnamachari (Madras: General): Sir, with regard to the only objection that has been put forward by Prof. Shibban Lal Saksena I would like to say that we have followed the scheme of article 258 already passed by the House, where it is the President that enters into an agreement and not the Parliament. Actually if we bring in Parliament for the purpose of making an agreement with the ruler of a State or the executive of a State, we are diminishing the status of Parliament which has supremacy over the States. Parliament cannot be a party to an agreement with the States: it is a matter of executive arrangement and the arrangement follows the scheme recommended by the V. T. Krishnamanhari Committee Report. That Committee's Report in its scheme for financial integration has practically done away with the system of land customs levied in various States. Only two exceptions have been made and one Singular exception happens to be Rajasthan where on an examination of the internal financial structure of the Union they have found that the Government of India will have to pay an enormous amount by way of subvention or a large amount of money by way of a grant if the State is to balance its budget. Therefore, they have for a period of five years to start with—perhaps it may be ten years in the ultimate—allowed them to levy land customs. This is a matter between one executive authority and another and if Mr. Saksena's amendment is accepted it will be taking away from the supreme position that the Parliament would enjoy in relation not merely to the executive at the Centre but also in relation to the executive of the States as well. This is a transitory provision and follows the scheme that has been recommended by a Committee which has gone thoroughly into the scheme of State finances and has prescribed ways and means by which complete integration can be secured at the earliest possible moment. I do feel that no possible objection can be taken which can be sustained with respect to the article in question.

The Honourable Shri K. Santhanam (Madras: General): Sir, I am glad that the draft of this article has been considerably improved and I certainly approve of the principle and the objective of the article. But there is one point which has to be examined in connection with this. It says: "any State which before the commencement of this Constitution was levying any tax or duty on the import of goods into the State from other States or on the export of goods from the State to other States". Suppose some articles come to Bombay port and go straight to Rajasthan and there they are liable to land customs. Will it come under the definition of import of goods from other States into Rajasthan? It will be from outside India into Rajasthan. I think the present agreements include land customs even on such articles. Therefore I do not know if the words "to other States" and similarly "from other States" are necessary. They seem to be wholly unnecessary. We are only concerned with land customs on goods coming into the State or going out of the State. Where they go or where they come from, I do not think, are matters of importance so far as this particular object is concerned and as every thing is defined meticulously in the actual agreement I do not think we should put in words which are likely to give merchants room for evasion. Because things come from Bombay they will argue that they do not come from any State in India and that they come from outside and therefore they ought not to be assessable to land customs under the agreement. I want the Drafting Committee to look into the point and see they do not give any loophole for evasion. I hope I have made

[The Honourable Shri K. Santhanam]

myself clear. My objection is to the words "from other States" and "to other States", which are wholly unnecessary for the purpose of this clause and may be deleted and thereby close one loophole for litigation and evasion.

Shri T. T. Krishnamachari : It takes into account existing States where they do levy customs duty on goods that come into the States, whether they are goods from outside or inside and it is merely.....

The Honourable Shri K. Santhanam : This clause will mean that if applies to goods coming from some State of India into another State and if the goods come from outside and enter a State this clause will not apply and therefore the State concerned will not be able to levy land customs on them. it is not intended to prevent the State from levying land customs and therefore this point may be looked into.

Shri T. T. Krishnamachari : After all it is only an enabling agreement.

The Honourable Shri K. Santhanam : It is limited by the clause of the Constitution. If the clause prevents the imposition of a duty then no agreement can prevail against the clause. That is why I suggest that we should widen the clause and leave the agreement to operate.

The Honourable Dr. B. R. Ambedkar : We will look into it.

Shri Raj Bahadur (United State of Matsya): I have sought this opportunity, to take a few minutes of this House while this article is under consideration to give vent to the feeling of the common people in the States' Unions about these customs, duties and taxation. As a matter of fact, ever since political awakening dawned upon the people of the Indian States customs taxes have been a particular target of political opposition. It was not without reason that the people of the Indian States and their movements were set against the imposition of customs duties on both imports and exports. It was because of a particular feeling amongst the people that this opposition was there. We have felt all through that all our trade, our industries have been crippled because of these Customs Duties. Even today we are not going to be benefited by it. Somehow or other, because these States were not viable units and they had to balance their budget the customs taxation was resorted to. Apart from that it was also supposed to be a part of the sovereign rights of the States. But so far as the interests of the people were concerned, they were not served by the imposition of these customs duties.

Even when this article is being retained here in this Constitution. I may at once give expression to my feeling and to the feeling of the large majority of the people in the Indian States that they are not at all happy about these customs duties being imposed in their States. As a matter of fact even the exports of buffaloes, bullocks, camels and donkeys are not being spared from these customs duties. In Rajasthan if you want to export a donkey, you will have to pay Rs. 7 per donkey. If you want to export a bullock you will have to pay Rs. 15 and in the case of a camel Rs. 25. The extra or surplus cattle that we have got we cannot easily export. Even the donkeys that we have got cannot be exported unless something is paid as customs duty on them. As far as cottage and, other industries and trades are concerned, they are crippled by the imposition of these customs duties.

I would, therefore, urge, while this article is under discussion that the Centre should come to our help. We do not want these customs duties to continue. In view of the fact that our province is a deficit province and the standards are very low, the sooner these customs duties and the Customs Department are done away with, the better for us. Even today the inter-State commerce and trade is being affected by such restrictions. Our trade with other provinces is obviously much

more affected. The price of the ordinary consumer goods that we want in our province is higher than if obtains in other provinces on account of the customs duties levied on such goods. All these considerations are there and the common man in the street or in the villages feels the pinch of this tax in his every day life. With these words, Sir, I would request the leaders and the Central Government to consider this point and come to the aid of our new Union, so that we may be rid of this scourge as early as practicable.

Mr. President : The question. is

“That in amendment No. 428, in the proviso to the proposed article 274DD, for the word ‘President’, the word ‘Parliament’ be substituted, and for the words ‘he thinks’ the words ‘it thinks’ be substituted.”

The amendment was negatived.

Mr. President : The question is:

“That with reference to amendment No. 400 of List XVII (Second Week), after article 274D, the following article be inserted:—

274DD. Notwithstanding anything contained in the foregoing provision of this Part or in any other provisions of this Constitution, any State which before the commencement of this Constitution was levying any tax or duty on the import of goods into the State from other States or on the export of goods from the State to other States may if an agreement in that behalf has been entered into between the Government of India and the Government of that State, continue to levy and collect such tax or duty subject to the terms of such agreement and for such period not exceeding ten years from the commencement of this Constitution as may be specified in the agreement:

Power of certain States in Part III of the First Schedule to impose restrictions on trade and commerce by the levy of certain taxes and duties on the import of goods into or the export of goods from such States.

Provided that the President may at any time after the expiration of five years from such commencement terminate or modify any such agreement if, after consideration of the report of the Finance Commission constituted under article 260 of this Constitution, he thinks it necessary to do so.’ ”

The amendment was adopted.

Mr. President : The question is :

“That proposed article 274DD stand part of the Constitution.”

The motion was adopted.

Article 274DD was added to the Constitution.

The Honourable Dr. B. R. Ambedkar : If my honourable Friend Pandit Kunzru has now no objection we may proceed with the new article 280A. He has had another half an hour.

Mr. President : I think we had better take it up a little later.

Article 302AA

Shri T. T. Krishnamachari : Sir, I move:

“That after article 302A, the following article be inserted:—

302-AA. (1) Notwithstanding anything contained in this Constitution and subject to the provisions of article 119 thereof, neither the Supreme Court nor any other court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, sanad or other similar instrument which was entered into by any Ruler of an Indian State and to which the Government of the Dominion of

Bar of jurisdiction of courts with respect to certain treaties, agreements, etc.

[Shri T.T. Krishnamachari]

India or any of its predecessor Governments was a party and which has or has been continued in operation after the date of commencement of this constitution, or in any dispute in respect of any right accruing under any of the provisions of this Constitution relating to any such treaty, agreement, covenant engagement, *sanad* or other similar instrument.

(2) In this article—

- (a) 'Indian State' means any territory recognised by His Majesty or the Government of the Dominion of India as being such a State; and
- (b) 'Ruler' includes, the Prince, Chief or other person recognised by His Majesty or the Government of the Dominion of India as the Ruler of any Indian State.' "

Sir, so far as the article itself is concerned, it is self-explanatory. The idea is to bar the jurisdiction of the courts including the Supreme Court in regard to adjudicating in respect of any disputes that might arise out of any treaty agreement, covenant, engagement, sanad or other similar instruments that might have been entered into by the Government of the Dominion of India or by any predecessor Government

An Honourable Member : Who will decide?

Shri T. T. Krishnamachari : The idea is that the court shall not decide in this particular matter. It is subject only to the provisions of article 119 by which the President may refer the matter to the Supreme Court and ask for its opinion and the Supreme Court would be bound to communicate its opinion to the President on any matter so referred by him. The House will also remember that there are a few articles in the Constitution specifically, 302A and 267A where there are references to these agreements, covenants, sanads, etc. and even these are precluded from adjudication by any court. The House will recognize that it is very necessary that matters like these should not be made a matter of dispute that goes before a court and one which would well nigh probably upset certain arrangements that have been recommended and agreed to by the Government of India in determining the relation between the rulers of States and the Government of India in the transitory period. After the Constitution is passed, the position will be clear. Practically all the States have come within the scope of Part VIA and they will be governed by the provisions of this Constitution and, excepting so far as certain commitments are positively mentioned in the Constitution, and as I said the two articles 267A and 302A, the covenants will by and large not affect the working of the Constitution; and it is therefore necessary in view of the vast powers that have been conceded in this Constitution to the judiciary that anything that has occurred before the passing of this Constitution and which might incidentally be operateable after the passing of the Constitution must not be a subject-matter of a dispute in a court of law. I think that Members of this House will understand that it is a very necessary provision so as to save unnecessary disputes by people who might feel that they have been affected or injured and who would rush to a court to make the court recognize such rights and other similar matters which have been paractically extinguished by the provisions of this Constitution excepting in so far as certain articles of the Constitution preserve them. Sir, I hope the House will pass the article without any demur.

(Amendment 403 was not moved.)

Mr. President : There is no amendment to this. Does any Member wish to say anything about this article? I will put this straightaway to vote.

The question is :

“That after article 302A, the following article be inserted:—

‘302AA. (1) Notwithstanding anything contained in this Constitution and subject to the provisions of article 119 thereof, neither do Supreme Court nor any other court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, sanad or other similar instrument which was entered into by any Ruler of an Indian State and to which the Government of the Dominion of India or any of its predecessor Governments was a party and which has or has been continued in operation after the date of commencement of this Constitution, or in any dispute in respect of any right accruing under any of the provisions of this Constitution relating to any such treaty, agreement, covenant, engagement, sanad or other similar instrument.

(2) In this article—

- (a) “Indian State” means any territory recognised by His Majesty or the Government of the Dominion of India as being such a State; and
- (b) “Ruler” includes the Prince, Chief or other person recognised by His Majesty or the Government of the Dominion of India as the Ruler of any Indian State.’ ”

The motion was adopted.

Article 302AA was added to the Constitution.

Schedule III

Mr. President : We might take up the other articles and Schedule III. They are minor things.

Shri T. T. Krishnamachari : Schedule III and the other articles involve reopening of articles and schedule already passed. We have to take the permission of the House.

Mr. President : You will ask for leave reopen.

Shri T. T. Krishnamachari : Mr. President, in the Order Paper today, beginning from item 1, article 13 to the Third Schedule, with the exception of the items relating to article 264-A, 274DD, 302AA which have been passed and 280A which has been held over, all the other items are for re-opening the articles or Schedules that have been passed. I would therefore request that you put to the House the proposition whether they are willing to allow these articles to be re-opened.

Mr. President : I take it that the House gives leave to re-open these articles.

The Honourable Members : Yes.

Mr. President : We shall take up Schedule III.

Shri H. V. Kamath (C. P. & Berar: General): What about article Mr. President: Let us finish first this Schedule.

Shri T. T. Krishnamachari : Sir, I move amendments 401 and 402 together:

“That in item IV of the Form of Oath, in the Third Schedule, after the words ‘judges of the Supreme Court’ the, words ‘and the Comptroller and Auditor-General of India’ be inserted.”

“That in item IV of the Form of Oath, in the Third Schedule, after the words ‘Supreme Court of India’, the brackets and words ‘(or Comptroller and Auditor-General of India)’ be inserted.”

This is merely an omission which we seek now to rectify. The form of oath that has been prescribed for the Judges of the Supreme Court will be prescribed, if it is accepted by the House to the Comptroller and Auditor-General of India.

Mr. President : There is no amendment to this amendment to the Schedule III.

The question is:

“That in item IV of the Form of Oath, in the Third Schedule, after the words ‘judges of the Supreme Court’, the words ‘and the Comptroller and Auditor-General of India’ be inserted.”

“That in item IV of the Form of Oath, in the Third Schedule, after the words ‘Supreme Court of India’, the brackets and words ‘(or Comptroller and Auditor-General of India)’ be inserted.”

The amendments were adopted.

Article 13

Mr. President : Let us take up article 13.

Shri T. T. Krishnamachari : May I request, Sir.....

Shri H. V. Kamath: With regard to this amendment, Sir.....

Shri T. T. Krishnamachari : May I request, Sir, that you take up the first item afterwards, at the end?

Mr. President : We shall take up item I later. Let us begin with article 16.

Article 16

Shri T. T. Krishnamachari : Sir, I move amendment No. 393 Which reads thus:

“That article 16 be omitted.”

The reason is that we have taken article 16 from the Fundamental Rights Chapter and put it in Part XA, in the Chapter entitled Trade, Commerce and Intercourse within the territory of India. The article now finds place in a different form under article 274-A which reads thus:

“Subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free.”

The difference between this and the article as it appears in article 16 is only in the phraseology of the articles which says that subject to the powers of Parliament, trade, commerce and intercourse etc. shall be free. Having taken it over to Part X-A, there is no meaning in keeping article 16 in the Fundamental Rights, and that is why I have moved this amendment.

May I also explain, Sir, to the Members of this House, who, I believe, are aware of the substance of my explanation, that the original idea of putting the article which confers a very restricted right under fundamental rights has got a history behind it. That was because at the time when we framed the Fundamental Rights we felt that the picture of the Constitution would be different. Even so, the right that is conferred is limited by any law made by Parliament. The appropriate place, therefore, for an article of this nature, which is in reality not a fundamental right, in the sense that other, articles, are fundamental rights, is in the chapter relating to trade and commerce. I think the House will have no objection to deleting what is now more or less a surplus article in the articles on fundamental rights.

(Amendment No. 416 was not moved.)

Pandit Thakur Das Bhargava (East Punjab: General) : May I ask a question of Mr. T. T. Krishnamachari? According to him, article 274A now takes the place of article 16. May I just know if article 25 shall apply to article 274A?

Shri T. T. Krishnamachari : My honourable Friend, if he waits for some time, will find that I shall be bringing forward another amendment to indicate that article 25 shall not apply to article 274-A and for eliminating its application to article 16. The normal processes of law, the normal powers that are conferred under this Constitution on the Supreme Court to see that every provision of this Constitution is observed will operate so far as all the articles 274-A to 274-E are concerned. Any special provision that might have operated will be very restricted in so far as article 16, as it now stands, permits. If Parliament had abridged that right by law, what could article 25 do by way of conferring any special right because what could be taken to the Supreme Court under article 16 could be only what Parliament chooses to allow people to take to the Supreme Court?

Shri B. Das (Orissa: General): Sir, as I understood article 16, it confers freedom of trade and commerce and intercourse throughout the territory of India. I listened most attentively to my honourable Friend Mr. T. T. Krishnamachari and I feel that though we have given certain powers under article 274-A or any other article I do not very much understand the idea that the articles on Fundamental Rights which we had discussed so thoroughly in this House on two or three occasions should be tinkered with. Supposing by article 274-A you have conferred equal freedom as is contemplated by article 16, let article 16 also remain. Of course, I heard Mr. T. T. Krishnamachari's argument that there is no need for going to the Supreme Court and to argue that the Fundamental Rights have not been interfered with. But, I am not clear in my mind, whether the subsequent articles do complete justice as was contemplated in article 16. I do not wish at the fag-end of our Constitution-making stage to tinker with the Fundamental Rights that we passed after so much thought, consideration and deliberation.

Shri Brajeshwar Prasad (Bihar: General): Mr. President, I would like to say a word or two.

I am really sorry, Sir, that this article has been deleted from the Fundamental Rights. I hold the opinion that there should be complete freedom of trade and commerce and that neither the provincial Legislatures nor the Parliament should have the right to curtail this fundamental right. I am really sorry that this article has been partly incorporated in article 274-A. I wish that the members of the Drafting Committee had given an amendment deleting article 274-A and not article 16.

Pandit Thakur Das Bhargava : Sir, article 16 constitutes one of the provisions which are under the purview of article 25 and this was a very important Fundamental Right possessed by the citizens that intercourse throughout the territory of India shall be free. It ensures that provincial boundaries shall not hamper any kind of movement and every person shall be able to enjoy the full fruits of the citizenship of the Republic of India. But now since we have passed certain provisions contained in part 10-A, it is true that to a certain extent this freedom has been curtailed and I had occasion to say when these articles were being considered how this right was being taken away, but all the same article 16 was allowed to remain where it was. We value this right because it is one of those rights which could be enforced under article 25 by the Supreme Court by appropriate proceedings though we have not decided how these proceedings will be worked out because the Fundamental Rights constitute new provisions; but all the same we were under the impression that some method will be found by virtue of which we will be able to see that the citizens of this Republic get cheap and easy relief under article 25.

[Pandit Thakur Das Bhargava]

Now this article is being taken away from the Fundamental Rights and 274-A takes its place. My apprehension is that we are being deprived in an unjust manner of the cheap remedies which were secured to us by article 16. This is not the only section, in which attempt is being made in this House at the fag-end of the Session to take away rights or remedies. We have an amendment to article 13 also. We have also seen how under article 307 all the rights are being taken by the Government under the garb of adaptation and modification and sought to be moulded in such manner as the Government considers proper.

I am sorry that I do not agree that article 16 should be taken away from this place of Fundamental Right because after all the appropriate proceedings secured by the Supreme Court may be easier and cheaper in the manner of implementation. I would like that this article 16 is not deleted.

The Honourable Shri K. Santhanam : Mr. President, I am afraid my Friend Pandit Thakur Das Bhargava is mistaken in his defence of article 16 as against 274-A because if he looks up article 304 relating to amendment of the Constitution, he will find that the process of amendment of 16 is the same as the process of amendment of 274-A. While on the one hand 274-A can be tempered with by Parliament ordinarily, article 16 gives Parliament the power to make any law limiting the freedom of commerce and intercourse throughout the territory of India. At least 274-A ensures the freedom of commerce subject to amendment of the Constitution, while 16 gives the Parliament freedom. You cannot have 16 and 274-A together as they are inconsistent. One of the other must go. Therefore he must choose whether 274-A must go or 16 must go.

Pandit Thakur Das Bhargava : 274-A is a pious declaration. A declaration decree may not be executable. The remedy under article 25 is cheaper and easier.

The Honourable Shri K. Santhanam : 274-A says it shall be free and there is the usual remedy. Anyone is entitled to go to the Supreme Court for enforcing any article of the Constitution, not only the Fundamental Rights. The Supreme Court is the guardian of every article of the Constitution. While 16 is a mere pious declaration leaving to Parliament all powers article 274-A says subject to amendment of the Constitution, trade shall be free, and the only limitations will be those specifically provided the following clauses. Therefore, it is necessary in the interest of consistency and for the freedom of the trade that article 16 should go.

Shri Kuladhar Chaliha (Assam: General): Sir, I have heard Mr. Santhanam with great care, but I find difficulty in following him or accepting his views. It is necessary that rights of intercourse throughout the territory shall be free. Such rights should always be incorporated in the Statute and if we take it away, probably we will be depriving ourselves of a great right which afterwards will be tinkered with or whittled down somehow or other and wiped out in the process of amendment. We have seen how it has been tinkered slowly and gradually by one section, then by another and then by the third. We have seen that process. If it is taken away, probably we will not be able to talk even here that we have such a right. Therefore these Fundamental Rights should be incorporated in some way, I, therefore, protest against the deletion of it.

Mr. Naziruddin Ahmad : Mr. President, with great respect I would also submit that I could not follow the reasoning of Mr. Santhanam in this regard. Article 16 was inserted as a part of Fundamental Right, that trade shall be free. Then somehow or other it struck the Drafting Committee to introduce an identical provision, article 274-A perhaps absolutely forgetting the existence of

article 16. If they knew of it or remembered it then of course article 16 should have been repealed at the time when 274-A was passed. But subsequently they found that there is an overlapping between 274-A and 16. I submit it is now a question of whether article 16 or 274-A should go. Personally speaking, article 274-A must go because 16 is more favourably situated in the Constitution than article 274-A, Article 16 is subject to the provisions of article 25 making this right justiciable. What justification is there to remove it from the justiciable part of the rights to article 274-A is a thing which is not made quite clear. I therefore, submit that it is not clear as to whether article 274-A should be justiciable. It is very doubtful and it will perhaps tax the intelligence of many constitutional lawyers and the Supreme Court to say whether it is justiciable or not. If this is justiciable there is no reason to remove article 16 and enact it here. I submit that article 274-A must go and 16 must remain in order to make it clearly and obviously justiciable.

Pandit Thakur Das Bhargava : It will be justiciable by appropriate proceedings and not necessarily by a declaratory suit.

Shri Alladi Krishnaswami Ayyar (Madras: General): Mr. President, the objection to the amendment moved by my Friend Mr. Krishnamachari proceeds on an entire misapprehension. As has already been pointed out by Mr. Santhanam the mere fact that a provision finds a place in the Chapter on Fundamental Rights does not carry with it any particular sanctity or any special sanction regard being had to the saving in article 16 itself—"subject to any law made by Parliament".

Article 16 as it found place in the Fundamental Rights ran in these terms:

"Subject to any law made by Parliament, trade, commerce and intercourse throughout the territory of India shall be free".

The article therefore gave a *carte blanche* to Parliament though the subject matter dealt with is styled a Fundamental Right. It is a right which can be invaded and encroached upon by Parliament in any manner it likes. That is the effect of article 16 of the Constitution as it stood.

The idea of transposing this provision to the Chapter relating to inter-State trade requires explanation. When the Constituent Assembly started its work in pursuance of the Cabinet Mission proposals, it was felt that unless we were in a position to bring inter-State provision as a Fundamental Right there was no scope for even freedom of trade. In the circumstances in which we were then placed it was thought desirable to put the freedom of trade clause in the Chapter on Fundamental Rights having regard to the circumscribed scope of the powers of the Constituent Assembly at the time when the Constituent Assembly started on its work. That is how the provision came to find a place in the Chapter on Fundamental Rights.

The House will remember that the Fundamental Rights Committee was constituted before the later developments in regard to the position of India and to the wider range of the powers of the Constituent Assembly. There is no question now of the Constituent Assembly being in any way restricted in the exercise of its functions and we are in a position to frame any constitution we like for a free and independent India. It is in this setting that the new articles relating to the freedom of trade beginning from article 274-A have been framed. We have, provided in article 274-A that trade and commerce throughout the territory of India shall be free subject to the other provisions in that part. Therefore, any legislation by Parliament affecting freedom of trade will be subject to the inhibitions contained in that Chapter.

The mere fact that a provision in regard to freedom of trade finds a place either in one part of the Constitution or in another part of the Constitution does not alter or affect the nature of the right. Articles 274B, 274C and 274D

[Shri Alladi Krishnaswami Ayyar]

contain the necessary exception and limitations to freedom of trade. There is one other thing also which you may notice in this connection. Article 274-C, far from abridging or restricting the scope of the right to freedom of trade, enlarges the scope of the Fundamental Right.

It says—

“Notwithstanding anything contained in article 274-B of the Constitution, neither Parliament nor the Legislature of a State shall have the power to make any law giving or authorising the giving of preference to one State over another or making any discrimination or authorising the making of any discrimination....”

This provision by restricting the power of the State Government and the Central Government enlarges the scope of the Fundamental Right, if you choose to call freedom of trade a fundamental right within the meaning of the Constitution.

Whether a particular provision is called a fundamental right or not, in regard to the point as to justiciability raised by my Friend Pandit Bhargava, it does not depend upon a particular provision finding a place in the Chapter on Fundamental Right or in other parts of the Constitution. So far as the jurisdiction of the Supreme Court is concerned, it has plenary jurisdiction with regard to the interpretation of the Constitution. The Supreme Court can be called upon to decide in every case whether a particular Statute or any law is in conformity with the terms of the Constitution or not.

I, therefore, submit there is no particular virtue in the article finding a place in the Chapter on Fundamental Rights. I think, when article 274 was before the House, my Friend Dr. Ambedkar pointed out the advantages of all the provisions relating to trade and commerce finding a place in a single chapter. On these grounds I submit there is absolutely no force in the objection to the proposition as moved by my Friend Mr. T. T. Krishnamachari.

Mr. President : Does Mr. Krishnamachari want to say anything?

Shri T. T. Krishnamachari : No, Sir. Mr. Krishnaswami Ayyar has answered all the points.

Mr. President : I shall then put it to vote. I mean amendment No. 393 asking for the deletion of article 16. The question is:

“That article 16 be omitted.”

The motion was adopted.

Article 16 was deleted from the Constitution.

Article 27

Mr. President : Then we take amendment No. 417.

Shri T. T. Krishnamachari : Sir, I would like to move amendments Nos. 394 and 417 together, because they both relate to article 27. I will first move No. 394:

“That in clause (a) of article 27, the word and figures ‘article 16’ be omitted.”

This is a consequence of the acceptance by the House of the previous amendment 393 to delete article 16.

Mr. President : Let us dispose of it now.

Shri T. T. Krishnamachari : Yes Sir.

Mr. President : This amendment follows upon the decision which has just been taken. The question is:

“That in clause (a) of article 27, the word and figures ‘article 16’ be omitted.”

The amendment was adopted.

Shri T. T. Krishnamachari : Mr. President, Sir, I move my amendment No. 417 which reads thus:

“That in the proviso to article 27, after the words ‘subject to the terms thereof’ the word ‘and to any adaptations and modifications that may be made therein under article 307 of this Constitution’ be inserted.”

Sir, this has become necessary because of the wording of article 307(2) which we have passed in which we have given power to the President to adapt and modify existing laws so as to fit them in with the provisions of the Constitution, as also the Fundamental Rights that we have passed.

Mr. President : There is no amendment to this. Does anyone wish to say anything about it?

Mr. Naziruddin Ahmad : There is no time for amendments at all.

Mr. President : Well, this has been there from the 15th inst.

Prof. Shibban Lal Saksena : No, we got it this morning.

Mr. Naziruddin Ahmad : At nine o’clock.

Mr. President : I think it is more or less a consequential amendment.

Mr. Naziruddin Ahmad : The effect of this amendment it is impossible to measure, unless one has the genius of Dr. Ambedkar.

Mr. President : I will put it to vote. The question is:

“That in the proviso to article 27, after the words ‘subject to the terms thereof’ the words ‘to any adaptations and modifications that may be made therein under article 307 of this Constitution’ be inserted.”

The amendment was adopted.

Article 42

Shri T. T. Krishnamachari : Mr. President, Sir, I beg to move:

“That in clause (1) of article 42, for the words ‘may be exercised by him’ the words ‘shall be exercised by him either directly or through officers subordinate to him’ be substituted.”

Sir, clause (1) of article 42, as amended, would read thus;

“The executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with the Constitution and the law.”

Sir, this has been found necessary, and it does not involve any serious variation. It is fairly.....

The Honourable Shri K. Santhanam : Sir, does it mean that a Bill passed by a Legislature could be signed by an officer subordinate to the President?

Shri T. T. Krishnamachari : The clause says, “in accordance with the Constitution and the law.” If the Constitution and the law permit that Bills could be authenticated by somebody else, appointed by the President, well, that will be possible.

The Honourable Shri K. Santhanam : The amendment permits such a thing. You are making the Constitution permitting the President to discharge his function through officers subordinate to him.

Mr. President : It relates to the executive powers and not the legislative powers. Signing of Bills, I suppose comes under legislative powers.

Shri T. T. Krishnamachari : Yes, this relates to executive powers. I am grateful to you, Sir.

The Honourable Shri K. Santhanam : If you want another instance, there is the question of the declaration of war. Can it be done by the Commander-in-Chief? Can this power be delegated? I do not think that in the absence of this amendment the executive head loses the power to do certain things through his officers. I do not think this is necessary. I do not think in any other Constitution a similar provision is to be found.

Mr. President : Mr. Kamath has given notice of an amendment to that effect.

Shri H. V. Kamath : I move:

“That in the proposed clause (1) of article 42 in amendment No. 418 of List XVIII, the words ‘either directly or through officers subordinate to him’ be deleted.”

I have no quarrel with the change of the word ‘may’ to ‘shall’. It is necessary and right. (An Honourable Member: What is the number of your amendment?) My amendment has no number, because I gave notice only this morning. I got List XVIII only last night and so could give notice of my amendment to it only this morning.

Sir, while this article was under discussion, it was made clear that the President would not exercise his executive power personally or directly, but certainly only in accordance with the Constitution. The President is only the symbol of executive authority. It does not mean that he will sit in Delhi and order the arrest of so and so and things like that. The Ministers or officers working with him or under him will exercise the executive power in accordance with the Constitution and the law. I fail to see why my honourable Friends Dr. Ambedkar and Shri T. T. Krishnamachari, with the acumen that they possess, still feel it necessary to bring in an amendment of this nature. This is redundant and I submit to the House that the words beginning with “either” and ending with “him” may be deleted, so that the article will read as follows:—

“The executive power of the union shall be vested in the President and shall be exercised by him in accordance with the Constitution and the law.”

That is sufficient for our purpose.

Mr. Naziruddin Ahmad : I submit that this amendment is not only hasty, but absolutely purposeless also. It has been introduced without enough consideration. I will draw the attention of the House to article 130(1) where the executive power of the State is vested in the Governor and may be exercised by him in accordance with the Constitution and the law. While we make a change here in article 42 we forget to make the same change in article 130 (1).

Mr. President : There is an amendment to that effect lower down the Order Paper.

Mr. Naziruddin Ahmad : All right, Sir. It should be obvious that the executive power of the Union, when it vests in the President, may be exercised by him in accordance with the Constitution. This obviously means that he may exercise that power in accordance with the Constitution, *i.e.*, with the help of agents. In fact there are a large number of departments of the Governments for the purpose such as the Courts, the Police, the Jails and so on. Is it to be supposed that unless we make it clear that the President shall exercise his powers through agents he has to act on his own initiative and personally? It is absurd to suppose so. This attempt to clarify things is grossly exaggerating the idea of going into details. I submit that when we vest the power in the Government or the President, we allow his executive to work in his name. It shows that the President and the Governors are merely legal entities and ornamental figureheads. Everything is done in the

name of the President. This is the purport of article 42(1) that the executive power may be exercised by the President in accordance, with the Constitution. That is the obvious significance. Then what is the object of changing the word ‘may’ into shall? The use of the word ‘may’ is very apt.

Shri H. V. Kamath: I think the word ‘shall’ refers to the constitutional exercise of that power.

Mr. Naziruddin Ahmad : The word ‘may’ is enough for the purpose. The exercise of this power is optional, and if it is exercised it must be in accordance with the Constitution. The President may not exercise it at all; and if he exercises it he shall do so in accordance with the Constitution. The word ‘may’ is enough for the purpose. It is difficult on the spur of the moment to see the weakness of this last-minute amendment. I ask, when is the Drafting Committee to finish its labours in order to give us some amount of rest and contentment? We want to go home as early as possible. But the Drafting Committee will not let us do so. As I have repeatedly submitted, they should make tip their minds and give to the House a complete picture of their drafts and not come here every day with fresh amendments of this sort. It is extremely tiresome and irksome for Members to work under these conditions.

Mr. President : I was going to call upon Shri Alladi Krishnaswami Ayyar to explain the position. But before doing so, I want to put him one question which strikes me also. It is said, ‘through officers subordinate to him’. Does it mean that it is contemplated that the President will have officers in the provinces on behalf of the Union, or does it mean that there will be only provincial officers who will act as subordinates to the President? Is it contemplated, as in America, to have two separate sets of officers, one belonging to the Union and the other belonging to the provinces?

Shri Alladi Krishnaswami Ayyar : In regard to purely federal subjects you can have purely federal official agency; but in regard to concurrent subjects you can utilise the provincial agencies. If the Federal Government is not satisfied with the provincial agencies, the Constitution provides that the Federal Government may have its own agency in regard to concurrent subjects. It is only in regard to provincial subjects that the entire provincial agency is entrusted with the task. There you use the officers subordinate to you, though they may not be directly subordinate. There is power of intervention even when the provincial agency is utilised. Inasmuch as it is for the enforcement of the Federal subjects, he will have the right to utilise the provincial agency.

I want to say something later about the general point raised.

Shri Brajeshwar Prasad : Mr. President, Sir, I rise to oppose the amendment which has been moved by my Friend, Mr. T. T. Krishnamachari. I hold the opinion that the amendment is not merely thoughtless as my Friend, Mr. Naziruddin Ahmad characterised it, but it is dangerous. The executive power of the President must vest in his hands and in his hands alone, because he has to perform under the Constitution certain functions; he has to use certain powers. I do not think unlike my Friend, Mr. Naziruddin Ahmad, that the President is merely an ornamental head. Had he been so, I would have no difficulty in accepting the amendment moved by Mr. T. T. Krishnamachari, but my reading of the Constitution is that the President has very large powers. I therefore hold the opinion, Sir, that it is dangerous, it is risky—it is in my opinion not merely thoughtless—to empower the President to delegate his powers under the Constitution into the hands of executive officers.

Pandit Thakur Das Bhargava : Mr. President Sir, with reference to this amendment, I am not satisfied whether this amendment is necessary. As a matter of fact, when we speak of the exercise of the powers of the President under article 42 and the use of the words “may be exercised by him,” we understand that these

[Pandit Thakur Das Bhargava]

powers are being exercised by the President in an almost impersonal manner. So far as the executive power of the Union is concerned, it is exercised by the President or by the Governor or by the Prime Minister or by many other officials. It is not that the President must exercise it in a personal manner. There are certain rules and regulations by virtue of which many officials have to exercise the executive power of the Union. If these words are there, it would give rise to the argument that the powers should either be personally exercised by him or by officers subordinate to him. When these officers so exercise these powers in many cases the President does not even know that these powers are being exercised in his name. Therefore, my submission is that the words "by him" do mean that either the President himself could exercise them or he could delegate those powers.

The second question may arise that the powers delegated by him can be exercised only by people to whom they are delegated because of a certain maxim that delegated powers cannot be delegated further. It would raise many other difficulties if we regard that the exercise by him of these powers is either personal or it is only through officers subordinate to him. Therefore my submission is that the words as they stand are quite sufficient and do not give rise to any sort of ambiguity. Moreover, Sir, I do not agree that the use of the word "shall" is necessary. In a particular context this word "may" does mean "shall".

So far as the question raised by Mr. Kamath is concerned that the powers shall be exercised in accordance with the Constitution and the law, the word "may" does not relate in any manner to the words "in accordance with the Constitution and the law". My submission is that the words that we have passed already are enough and they answer all the purposes they are intended to answer and no change need be made.

Prof. Shibban Lal Saksena : Sir, the question is, if this amendment is not, made, what harm would accrue? If I see it from that point of view, I think that this amendment is not only redundant, but it is positively injurious. In fact, nobody thought so far that this article 42 was incomplete. It says 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. Now the amendment says that that power shall be exercised by him either directly or through officers subordinate to him. Is it necessary? Does not the Constitution and the law say that the President shall use officers provided for him for carrying out his purpose. In fact, the clause says "in accordance with the Constitution and the law". As the Constitution and the law prescribe how the President shall exercise his powers either himself or through officers, I think these words are absolutely unnecessary. I do not think any amendment is necessary.

The Honourable Shri N. Gopaldaswami Ayyangar (Madras: General): Sir, I feel some difficulty in appreciating the objection which has been raised to this particular amendment. Article 42 says that the executive power of the Union shall be vested in the President. We all know or lots of powers which are vested in the President but actually he does not exercise those powers. He simply exercise them at the dictation of other people who are responsible to the legislature. That is point number One which I should like the House to appreciate.

The Second thing is that the Constitution itself contemplates that executive action, which is really the exercise of executive power, cannot as a matter of fact be done by the President directly. Look at article 64(1). It says:

"All executive action of the Government of India shall be expressed to be taken in the name of the President."

So, the actualities of the case require that in innumerable matters the Constitution or the law vests the power in the President, but the actual exercise of it is to be left to other people who are held to be responsible to him. No doubt, he takes the responsibility for action taken by these officers. It is impossible as a matter of practical administration for the President to exercise all the powers that are vested in him by the Constitution. Take, for instance, even the powers which relate to the exercise of his functions in relation to legislation. On a number of matters, for instance, the power of summoning the Assembly, dissolving the Assembly and so on, he takes action, but the exercise of that power is on the advice of his constitutional advisers. And in the ordinary course he cannot really exercise all the powers that are vested in him. What is the objection to his asking officers subordinate to him, who owe responsibility to him, to exercise such powers? As it is absolutely unnecessary for him even to look at them before those orders issue, we ought to give him the latitude to select such officers in whom he can have confidence and who may be trusted to exercise this power.

I have no doubt noticed the objection: what is he to do in regard to giving assent to Bills when passed by the Legislature? True, ordinarily we expect the President to sign those Bills in token of his assent to express his assent on them. Naturally in a case of that sort he would not ordinarily ask other officers to sign for him, but assuming that circumstances arise in which he is unable to append his signature to an assent of that sort, it may be necessary for him to ask that somebody else should sign the assent in his name. I do not see anything which is legally improper, or even from a constitutional point of view improper, for somebody to sign even an assent to a Bill passed by the Legislature if the President is unable to do so or thinks in particular circumstances other people might sign in his name. I think that in order to obviate difficulties which would actually arise, the addition of these words is very necessary.

Shri H. V. Kamath: Is not the purpose that my Friend Mr. Gopaldaswami Ayyangar has in view sufficiently met by the phrase "in accordance with the Constitution and the law?" Whatever is delegated to other persons or agents will be done by the President in accordance with the Constitution and the Law.

The Honourable Shri N. Gopaldaswami Ayyangar : In that case we shall have to go to Parliament for a law in every case he wants to authorise an officer to do so. But if Parliament can authorise it, why not the Constitution do so?

Shri Alladi Krishnaswami Ayyar : Sir, some of the points I wanted to urge have been anticipated by my Friend Mr. Gopaldaswami Ayyangar. There is nothing novel in trying to bring the present provision in line with Section 7 of the Government of India Act, 1935. Though Mr. Naziruddin Ahmad, in the plenitude of his literary wisdom, has chastised the Drafting Committee as being careless, I would invite his attention to the language used by the Parliamentary draftsmen in Section 7 of the Government of India Act. I am reading the Section:—

"Subject to the provisions of this Act, the executive authority of the Federation shall be exercised on behalf of His Majesty by the Governor either directly or through officers sub-ordinate to him....."

Therefore, there is nothing novel or fantastic in making an express provision to the effect that the executive authority can be exercised through official agencies.

So far as the general executive power is concerned, it is vested in the

[Shri Alladi Krishnaswami Ayyar]

President. So far as the responsibility for carrying on the executive administration is concerned it is vested in the Ministers. So far as the question of utilisation of official agencies is concerned, it is implicit in the very foundation of the Constitution. I should think that even under a provision as it stands without the amendment, it would be perfectly competent for the President to institute any official agency, though the ultimate responsibility for the acts of any official agency, would be that of the President advised by his Cabinet. As a matter of fact, when the original article was drafted it was on the lines of article 12 of the Irish Constitution. That article runs thus:—

“There shall be a President..... who shall exercise and perform the powers and functions conferred on the President by this Constitution and by law.”

Shri H. V. Kamath : That is an argument against your view.

Shri Alladi Krishnaswami Ayyar : The present amendment says that the President may exercise the power either directly or through officers subordinate to him.

Shri H. V. Kamath: I have got a copy of the Irish Constitution with me here. Officers are not at all mentioned there.

Shri Alladi Krishnaswami Ayyar : If only you have the courtesy to listen to me you would not have raised the objection. I pointed out that even without an express provision like that it would be competent for the President to have or to institute any official agency, and there are Constitutions in which express provision is not made, and I referred to article 12 of the Irish Constitution which to some extent will support Mr. Kamath's point of view. There are some counsel who, even when the opposite side makes a concession in favour of one's contention, would oppose the opposite side. That seems to be the attitude of my friend Mr. Kamath. What I pointed out was that it is merely a question of drafting and making the provision clear. The Parliamentary draftsmen in Section 7 of the Government of India Act made express reference to officials. In the Irish Constitution there is no reference to officials. Even without a reference to officials it would be perfectly competent for the President to utilise official agency for the purposes of carrying on executive function, though ultimately the responsibility will rest upon the President and the executive in regard to the discharge of any function vested in the executive whether under any statute or whether under the general principles of the Constitution in regard to the functions of the executive.

Therefore, I submit, Sir, that in making quite clear what is implicit, there is nothing wrong. “Official” is the word used there, whatever objection you may have in regard to the Government of India Act of 1935, generally, there can be no objection to adopting this wording here. I would also go further and urge the necessity for such a provision from a constitutional point of view. The question as to the exact extent to which the President can delegate his function has been debated in America. If, for example a power is vested in the President, questions might arise as to whether it is possible at all to delegate his authority or whether in every case issue should come up before the President. We are told that in fact nearly 2,000 signatures have to be obtained from the President almost every day so far as the presidential system is concerned. That has been pointed out recently in a book published in regard to the American Constitution as to the necessity of Presidential signature in regard to very many Acts of which he may know nothing.

Therefore, we have to divorce these two questions: the question of the, ultimate responsibility and the question of the particular agency which may be employed in the working of any governmental institution or any structure. Therefore a statute might provide that a particular agency may carry out orders.

Even there it does not mean that the Government of the country is not responsible for the proper functioning of the statutory agency. The agency may be a statutory agency or it may be an administrative agency. In all these cases there is nothing to prevent the executive from employing any particular official agency; by putting in the word "officers" all the theory of delegation which has loomed large in the American Constitution will be set at rest.

It is possible that having regard to the fact that our system is founded mainly on British ideas, even without such a provision an official agency might be employed. In the other Dominion Constitutions, a general provision is incorporated to the effect that the power is vested in the Queen. The Australian and the Canadian Constitutions say so. It is merely the employment of a particular language and I see absolutely no objection to that: The average layman need not go into the question as to the American law or Constitution or to the provisions of Dominion Constitutions. To make it clear to the laymen in this country that an official agency can be employed. this provision is a salutary one.

Shri H. V. Kamath: On a point of clarification, Sir, may I ask my Friend Mr. Alladi Krishnaswami whether any other Constitution in the world makes such a reference to subordinate officers of the executive head of the State in this context.

Mr. President : He read out a Section from the Government of India Act.

Shri H. V. Kamath: The Government of India Act is no Constitution of a free State.

Shri Alladi Krishnaswami Ayyar : This question has nothing to do with freedom.

Shri H. V. Kamath: It is a stupid provision.

Mr. President : I will put this to vote. Mr. Kamath's amendment is really a negative of this.

Shri H. V. Kamath : No, Sir.

Mr. President : Very well, I will put yours to vote first. The question is :

"That in amendment No. 418, in the proposed clause 1 of article 42, the words either directly or through officers subordinate to him be deleted."

The amendment was negatived.

Mr. President : Then I will put the proposition moved by Mr. Krishnamachari. The question is:

That in clause (1) of article 42, for the words 'may be exercised by him' the words 'shall be exercised by him either directly or through officers subordinate to him be substituted.'

The amendment was adopted

Mr. President : I think it is one o'clock now and we shall adjourn. I desire to point out to Members that we shall take up the other, articles, of which notice is given in today's agenda at 4.30 this afternoon.

Pandit Hirday Nath Kunzru : When we agreed to a session being held today it was, I think, understood that the session would be held only in the morning. I do not think anybody was prepared for an afternoon session. I should earnestly request you, therefore, to hold another session tomorrow morning. We have engagements this afternoon which were made because in the normal course the Assembly does not meet in the afternoons.

Mr. President : I did not understand, at any rate, that we would not sit in the afternoon today. It was left open and it is for us to decide now whether we shall sit in the afternoon or not. In view of the fact that many Members are anxious to complete the Second Reading stage and many of them are anxious to go away on account of Dipawali, I think we should sit in the afternoon today. If we do not sit this afternoon, it may be that we may not be able to finish even tomorrow.

The Honourable Shri N. Gopaldaswami Ayyangar : As a matter of fact sir, we and several others have accepted invitations to a party at the Government House at 5 P.M. today. If we start at 4.30, I do not think we can do any business.

The Honourable Dr. B. R. Ambedkar : In that case we may meet at 4.

Mr. President : This House has the first claim upon its Members. I therefore fix 4.30 this evening. The House stands adjourned till 4.30 p.m.

The Assembly then adjourned for Lunch till Half-past Four of the Clock.

DRAFT CONSTITUTION

The Assembly reassembled after Lunch at Half Past Four of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

Article 280A

The Honourable Dr. B. R. Ambedkar : Sir, I move:

“That after article 280, the following new article be inserted :

‘280-A. (1) If the President is satisfied that a situation has arisen whereby the financial stability or credit of India or of any part of the territory thereof is threatened, he may by a proclamation make a declaration to that effect.

- (2) The provisions of clause (2) of article 275 of this Constitution shall apply in relation to a proclamation issued under clause (1) of this article as they apply in relation to a Proclamation of Emergency issued under clause (1) of the said article 275.
- (3) During the period any such proclamation as is mentioned in clause (1) of this article is in operation, the executive authority of the Union shall extend to the giving of directions to any State to observe such canons of financial propriety as may be specified in the directions, and to the giving of such other directions as the President may deem necessary and adequate for the purpose.
- (4) Notwithstanding anything contained in this Constitution—
 - (a) any such direction may include—
 - (i) a provision requiring the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of a State;
 - (ii) a provision requiring all Money Bills or other Bills to which the provisions of article 182 of this Constitution apply to be reserved for the consideration of the President after they are passed by the Legislature of the state ;
 - (b) it shall be competent for the President during the period any proclamation issued under clause (1) of this article is in operation to issue directions for the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of the Union including the judges of the Supreme Court and the High Courts.
- (5) Any failure to comply with any directions given under clause (3) of this article shall be deemed to be a failure to carry on the Government of the State in accordance with the provisions of this Constitution.’”

Sir, having regard to the present economic and financial situation in this country there can hardly be any Member of this Assembly who would dispute the necessity of some such provision as is embodied in this new article 280A and I therefore, do not propose to spend any time in giving any justification for the inclusion of this article in our Draft Constitution. All that I propose to say is this, that this article more or less follows the pattern of what is called the National Recovery Act of the United States passed in the year 1930 or thereabouts, which gave the power to the President to make similar provisions in order to remove the difficulties, both economic and financial, that had overtaken the American People as a result of the great depression from which they were suffering. The reason why, for instance, We have thought it necessary to include such a provision in the Constitution is because we know that under the American Constitution within a very short time the legislation passed by the President was challenged in the Supreme Court and the Supreme Court declared the whole of that legislation to be unconstitutional, with the result that after that declaration of the Supreme Court, the President can hardly do anything which he wanted to do under the provisions of the National Recovery Act. A similar fate perhaps might overwhelm our President if he were to grapple with a similar financial and economic emergency. In order to prevent any such difficulty we thought it was much better to make an express provision in the Constitution itself and that is the reason why this article has been brought forth.

Prof. Shibban Lal Saksena : Sir, I beg to move:—

“That in amendment No. 429 of List XVIII (Second Week), in clause (1) of the proposed new article 280A, for the words ‘has arisen’ the words ‘is imminent’ be substituted.”

The article if my amendment is accepted will read thus :

“If the President is satisfied that a situation is imminent whereby the financial stability or credit of India or of any part of the territory thereof is threatened, he may by a proclamation make a declaration to that effect.”

My reason for this amendment is this that after the situation has arisen, it might lead to much disturbance and people might lose confidence in the country’s credit. The article says that if a situation has already arisen and there is chaos, people will lose confidence in the credit of the State. I want instead of the words “has arisen”, the words, “is imminent” to be substituted.

My second amendment is No. 441 which reads as follows:—

“That in amendment No. 429 of List XVIII (Second Week), in clause (3) of the proposed now article 280A, after the word ‘operation’ the words ‘Parliament shall have power to make laws in respect of subjects contained in the State List as if they were subjects in the Concurrent list, and’ be inserted.”

If my amendment is accepted, the article will read as under:—

“During the period any such proclamation as is mentioned in clause (1) of this article is in operation Parliament shall have power to make laws in respect of subjects contained in the State List as if they were Subjects in the Concurrent List, and the executive authority of the Union shall extend to the giving of directions to any State to observe such canons of financial propriety as may be specified in the directions, and to the giving of such other directions as the President may deem necessary and adequate for the purpose.”

Sir, these amendments of mine are only intended to cover two lacunae in the article. Although the article is an extraordinary one and provides for financial emergency, in the present state of our country, I think it is necessary that the power should be with the executive. I have only tried to compare it with article 275. What I wanted is this: First of all, by changing the words “has arisen” into “is imminent” in clause (1), we would be able to take measures before the situation becomes grave. Therefore as soon as a financial emergency is imminent, we can take the necessary measures if we substitute the words “is imminent” for the words “has arisen”.

Then the President should have the power to treat all State Subjects as if they were subjects in the Concurrent List and Parliament should be able to legislate about them. It is quite possible that the State may be forced by some legislation of their own, by their own laws to act in a particular manner and may not have the legal authority to carry out the directions of the President. What I want is that the Parliament should have power to alter those laws of the States and therefore I want that during that period Parliament shall have power to pass laws even on subjects contained in. List No. 2 as if they were in the Concurrent List, so that the necessary financial measures will be taken in order to meet the emergency. I think that unless that is done, a mere order will not enable the President to pass orders or to have them carried out because they may conflict with the laws of the States and it may not be possible for the President to get those laws changed. Further the Provinces may not be agreeable to them. So what I want is that Parliament should be given this power that in those matters laws may be made by Parliament.

I think, Sir, that these amendments are necessary. We want this power. May I also say that this article does not take away any powers of the legislatures also and I think it is necessary in the interests of the State especially when we are in the midst of financial distress.

Shri H. V. Kamath: Sir, may I ask your permission for a verbal change in this amendment No. 438? I propose to use the word “breakdown” instead of the word “chaos”.

Mr. President : Yes. (*Interruption.*)

Shri H. V. Kamath: I have got the President’s permission to change the word “chaos” to “breakdown”. Sir I move amendments Nos. 438, 442 and 444 of List No. XIX. Amendment No. 438 is to the effect.

“That in clause (1) of the proposed new article 280A. for the words ‘whereby the stability or credit of India or of any part of the territory thereof is threatened, the words ‘which threatens India or any part thereof with financial breakdown or economic disaster,’ be substituted.”

Amendment No. 442 is to the effect:

“That in amendment No. 429 of the same List, clause (4) of the proposed new article 280A be deleted.”

Amendment No. 444 is to the effect:

“That in amendment No. 429 of the same List, clause (5) of the proposed new article 280A be deleted.”

This new article 280-A invests the President of the Union with further emergency powers, powers in excess of what have been conferred on him by the Constitution under articles 275, 276 and subsequent articles upto 280. This article envisages a contingency or a situation where the financial stability or credit of India or any part thereof may be threatened. I feel that this contingency or danger to economic stability or credit of India or any part thereof ought not to be regarded as an adequate ground for the proclamation of an emergency. An emergency proclamation can be justified only under more dire circumstances, that is, only in the event of or only when there is danger of a financial breakdown or economic disaster. To invest the President with such wide powers in the event of the financial stability or the credit of India or of a province or State thereof, being threatened is going much too far.

This morning, you rightly observed, Sir that many provinces are complaining about or have already complained about the ill distribution of the Income-tax proceeds, and that a new inroad upon their revenues was made this morning, as some honourable Members felt, by the article on Salas Tax adopted by this House. Some provinces like Madras, and partially the Central Provinces too, have inaugurated prohibition. That has eaten into the revenues of the provinces, and has further put them to extra expenditure on prohibition staff and ancillary paraphernalia.

Suppose, under these circumstances, the situation in future worsens. The world economic situation may worsen may aggravate. We shall try our best to see that our economic conditions improve, but what with devaluation all over the world including the devaluation of our own Rupee, no one would be Such a rash prophet as to say that we will be better off in the near future. Suppose, if the worst comes to the worst, the economic situation worsens further and the provinces, on account of the loss in revenue on account of prohibition and on account of other factors besides, cannot put into effect the constructive schemes which they have in mind, and suppose they are hard put even to make both ends meet, and their budgets are deficit budgets, imagine, it is not an improbable situations series of deficit budgets—may not be large deficits even small deficits every year—such a situation may be construed by the President as one where the financial stability or credit of the particular province or State is threatened. May I ask, will that be adequate ground for the President to assume to himself the powers which will be his once a proclamation of emergency is

[Shri H. V. Kamath]

made? I say, Sir, if we really want to implement the scheme of provincial autonomy, in spirit as well as letter, this is not the way to treat our constituent units. Certainly see to it that financially, economically, we are sound. But, on the slightest pretext of the administration not being able to put through their schemes, and not being able to produce surplus budgets, on these pretexts, it will—I will not use any strong words—it will not be wise for the President to proclaim an emergency and assume to himself all the extraordinary powers that will accrue to him once such proclamation is made.

I agree, I admit freely, that this course must be adopted if there is imminent danger of a financial breakdown,—that is certainly a much worse situation potentially a much more dangerous situation than economic instability. Economic stability may mean nothing to anybody or all things to all men. If there is any danger of financial breakdown or economic disaster, then certainly I can agree to vest certain emergency powers in the President, but not otherwise; not on the mere threat to economic stability or financial stability of a province. That may mean, as I said, many things. I cannot agree to vest emergency powers in the President for this reason of any threat to economic stability. My submission to House is that if there is danger of a breakdown or a disaster, then only the President may be invested with emergency powers.

I am afraid, looking to the paucity of attendance in the House today, that we are very likely to pass this article without mature care and attention being bestowed on it. It is an unfortunate circumstance that Deepawali is so close. Honourable Friends are more keen on illuminating their homes during Diwali than on illuminating the darkness that seems to have overtaken the House at the fag-end. I hope, in spite of the paucity of attendance, those Members who are Present here will carefully consider this matter as to whether it would be necessary to invest the President with such powers when the financial stability or credit is merely threatened.

I come now to amendments 442 and 444 which seek to delete clause 4 (a)—it ought to be 4(a); It has been wrongly typed here; I sent amendment No. 442 as referring to clause 4(a) of the proposed new clause, not the whole of clause (4)—and clause 5 of the proposed new article. The House will see that clause (3) gives the President ample powers in the event of a Proclamation of Emergency under these circumstances. The last part of clause (3) reads thus: “and to the giving of such other directions as the President may deem necessary and adequate for the purpose.” This omnibus provision enables him to do practically what he likes so long as when he passes the order he says, “I am satisfied that it is necessary and adequate for the purpose.” He can do whatever he likes and nobody can question his acts or decrees or ordinances in a court of law or anywhere else on earth. In the face of this, I personally feel that there is no necessity for incorporating clause 4(a) in this article, because clause 4(a) refers to the reduction of salaries and allowances and some provisions about Money Bills which are matters which could come within the scope of the provision embodied in the second part of clause (3). So, this can be safely deleted without any detraction from the meaning that is attached to clause (a) and without derogating from any of the powers that this clause confers on the President in the event of a financial emergency.

Clause (5) is a mere consequential provision. Why it is put in here at all. I do not understand. I fail to see any *raison d'être* for this clause. If the House will turn to article 277A and 278 which this House adopted a few months ago my honourable Colleagues will see that this contingency when the Government of any State cannot be carried on in accordance with the provisions of this Constitution is clearly, unambiguously visualized in these articles 277A and 278. Now,

Sir, the Governor of the State must decide as to whether the Government of that State can or cannot be carried on in accordance with the provisions of this Constitution and the Governor makes a report. The first clause of 278 says—

“If the President, on receipt of a proclamation issued by the Governor of a State under article 188 of this Constitution, is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution, he may by proclamation etc. etc.”

This is very clear. After the issue of directions by the President under this new article 280A when he visualizes a financial emergency in India or any part thereof, what is the need for this clause (5)? The Governor is on the spot and he can and will, if he is a conscientious and diligent Governor, he is bound to report to the President from time to time as to how these directions are being implemented. What are we doing here by incorporating all sorts of jumble—I would not use stronger words—and absolutely unnecessary verbiage? We have adopted articles where we have provided for emergency powers, and if the Governor feels and is satisfied that the Government of the State cannot be carried on in accordance with the Constitution, he will report to the President, why should we say ‘Any failure to comply with the directions given etc.’? Who will judge? That is the crux of the matter referred to in clause (5). Who will judge—will it be the President or Governor or some other authority? Make it clear and do not leave it vague. If the President is satisfied it is a failure, then make it clear that if the President is satisfied that it is a failure, then it means the State Government has failed. Otherwise say that the Governor of the State will report to the President about the failure or otherwise.

But clause (5) in the first place is unnecessary, redundant, and secondly, it is very vague. The authority or the person to judge where there is a failure or not is nowhere defined and it is dangerous to leave it so vague as this. Make it clear beyond any shadow of doubt that the President will judge as to whether it is a failure or not. If it is left vague, it will reflect on our own wisdom. I hope that Dr. Ambedkar’s learning is not so completely divorced from good sense and wisdom that he cannot see the force of my contention. He is learned I agree, but I hope his learning is not completely divorced from other components of human wisdom; and I hope he will bestow sufficient attention upon the amendments I have moved. I commend them with all my heart to the House for the consideration.

Shri Brajeshwar Prasad : Mr. President, Sir I move amendments 439, 440 and 443. They read as follows:

“That in amendment No. 429 of List XVIII (Second Week), in clause (1) of the proposed new article 280A after the words “threatened” the words “or is likely to be threatened” be inserted.”

“That in amendment No. 429 of List XVIII (Second Week), for clause (2) of the proposed new article 280A, the following be substituted:—

‘(2) The proclamation issued under clause (1) of this article shall continue till such time it is revoked by the President.’ ”

“That in amendment No. 429 of List XVIII (Second Week), for paragraph (ii) of sub-clause (a) of clause (4) of the proposed new article 280A, the following be substituted:—

‘(ii) a provision requiring all Bills to be reserved for the consideration of the President after they are passed by the Legislature of the State.’ ”

I would make a few comments in connection with the amendments which I have moved. Sir, I am of opinion that when there is a period of financial crisis, provincial autonomy must completely be suspended till such time as the emergency lasts. There should be no hesitation, there should be no qualms of conscience on this account. I am of opinion that the period of emergency should

[Shri Brajeshwar Prasad]

last till such time as the President in his discretion may consider to be necessary. This proclamation should last till the emergency lasts. There is no sense in going to Parliament and seeking its approval whether the period should be extended or not. The President and the President alone is the best person to judge whether the emergency is over or not. Do not distrust the President—he is the first citizen of the State. He represents the people of India in a more true sense than any member of Parliament. He is elected by the representatives of the Legislatures of the Centre and the Provinces. He is not elected by a particular constituency. Therefore it is in the fitness of things that power should be vested in the hands of the President alone.

I am of opinion that by doing so we will not be violating any Constitutional convention because the essence of Federal Constitution is the separation of powers. Under the new Constitution our Parliament is not going to be a sovereign body. I cite the case of the American President. He has a large number of powers. Nobody can say that he is a dictator or autocrat or that by vesting powers there has been any violation of the principle of federalism. Therefore, I am of opinion that power must be vested in his hands to deal with any situation that may arise in the future as a result of financial instability or crisis.

We have achieved our freedom only a few years ago. Is it right or proper that we should jeopardise our freedom at the altar of some newfangled notion or concept? Our State has become free at a time when the political horizon is full of anxiety. The political and economic situation not only of this country, but of all parts of the world is on the brink of disaster.

Therefore, our Constitution must take these factors into account.

Sir, there is another factor which must be borne in mind. This institution of Parliamentary Government is quite alien to the genius of our people. Our ancient law givers were Saints and Seers and not Parliamentarians. Therefore, I have more faith in a President than in a Parliament elected on the basis of adult franchise in a country where there is no literacy, where the standard of living is very low and where the people are the victims of communal passions. Therefore, I am of opinion that we must not jeopardise the interest of the State at the altar of Parliamentarism or of any ideology. Ideologies are mere concepts. They may be cloudy, hazy and nebulous. But the State is a solid reality, and we cannot jeopardise the interests, of the State at the altar of some newfangled notions. In the words of the German philosopher Hegel—“The State is God on earth”. I am, therefore, of opinion that if vital questions are left to be decided by Parliament, it will mean the end of the State. It is only in a very highly developed community that Parliament plays an effective part. In a country like India it is bound to occupy a secondary role. For a long time to come, the executive and the executive alone will play a dominant part in our national life. If our Constitution does not recognise this fact, it will break down and plunge the country into chaos and anarchy.

Mr. President : Did you move amendment No. 443?

Shri Brajeshwar Prasad : Yes, Sir, all the three amendments.

Mr. President : All the amendments are moved and the article are now open for discussion.

Shri R. K. Sidhwa (C.P. & Berar: General): Mr. President, Sir, yesterday, when my Friend Mr. Krishnamachari told me that a clause regarding financial emergency was to come up, I felt that probably there was going to be some another cut upon the right and privileges of the legislature. But when I received this article last night, I must admit that I found that this article is justified; and

under the conditions that exist now, and that may exist, I do feel that if this article had not been there, our Constitution would not have been complete. I give credit to the Drafting Committee for even at this last moment, to have realised that such a situation might arise, and therefore, the President must be empowered with these extraordinary powers. My Friend Mr. Kamath has been having unnecessary apprehensions of the President misusing these powers. Mr. Kamath said that even if there is a deficit budget, the President might declare that there is an emergency in the financial stability of the country. If we have a President who really declares, because of a deficit budget that there is financial emergency, then I must say that that President is not worthy of occupying the high place that he would occupy, and I may add that it is the House and the persons who will be electing the President who would be responsible for it. But I am quite confident that both Houses will elect a really able and eminent, just and right type of person who will exercise his powers rightly and who will judiciously interpret the provisions of this article. I have no apprehensions on that, whosoever may be the President of the Indian Union.

Sir, what does the clause say ? It says—

“If the President is satisfied that a situation has arisen whereby the financial stability or credit of India or of any part of the territory thereof is threatened, he may by a proclamation make a declaration to that effect.”

Now, we know from our experience of our two and a half years of independence, that the political freedom that we are enjoying is absolute, but as far as our economic conditions is concerned, we have to depend upon other countries finances: as, we have not stabilised our finances yet. I do not mean, therefore, that there is an emergency now. I can only say, here is the economic picture before us; and whatever may have been the reasons that have led to it, they are not of our making. But the circumstances under which we were living and were governed, and the world situation, have led to the present economic condition. This is not an emergency. But a real emergency might arise whereby the financial stability may be affected, and we will be perfectly justified if we have an article like this, and I have no doubt at all in my mind that this article then would be very helpful.

Mr. Kamath made capital out of clause (4), but I welcome that article. What does it say? It says that the President shall have the power to reduce the salaries and allowances of the staff when necessary.

Shri H. V. Kamath: My only difficulty was that this power was not vested under clause (3).

Shri R. K. Sidhwa : But clause (4) says—

“Notwithstanding anything contained in this Constitution—

‘any such direction may include (i) a provision requiring the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of a State.’ ”

Today we know very well how our staff is not only heavily paid but how they are excessive in numbers. But that apart, this is a very happy provision, and we should all welcome that the President is vested with this power, because we know that in the Constitution, we have provided for the salary of the Judges and that it may not be reduced in times of emergency. We have been clamouring over the high salaries of the Judges, and when the Drafting Committee comes with a provision that in the event of a financial instability. The President will have the right even to cut down the salary, we say that it is not proper. I am very sorry to hear this. I must, on the other hand, give credit to the Drafting Committee. I am a man to give credit where credit is due, though I give a bit

[Shri R. K. Sidhwa]

of my mind where that is necessary. About the judges also, in (b) we have said that the President can reduce the salaries of the judges of the Supreme Court and the High Courts. I welcome this article. It did not strike me at all that such a provision is necessary, but after reading it, and after seeing what is surrounding us, and what is going to happen, I feel that it is very necessary. Let us foresee things. We must also foresee what may happen in future. We cannot always be content with confining our ideas to the present. A Statesman is he who foresees things. A politician is he who foresees what is going to happen.

We know we have achieved our political freedom, but unless our economies are fully stabilised, then the political freedom which we have won will always be in such a position that we will not be able to render the service to humanity as we would like to. 'Today we know we passed so many laws and I know there was a little fear in the minds of several Members in connection with the article relating to the Sales Tax. And I do feel that they were justified in feeling that they would have to cut down their finances and so would not be able to introduce so many of their development schemes. But still I supported the article, because it is in the greater interests of the country. And at any time when there is a question of cutting down the powers of the Legislature or of the President comes up, we should look at the merits of it, and looking at the merits of the present question. I feel the article is perfectly justified and I am confident that the President, whosoever he may be, he will exercise his power rightly, and interpret this article in the right sense and in the right manner and for the benefit of the country and the benefit of the people of this country. With these words, I support the amendment that has been moved by Dr. Ambedkar, article 280A.

I do not want to say anything more. But if you were to look at the article and at the provisions of sub-clause (ii) of clause (4), you will see that it relates to even money Bills. Power is given to the President to see that if he feels that the provisions of article 174 combined with those of 182 are likely to jeopardise the financial stability of the country, he will certainly use his power, and apply the brakes in applying this article 280A. But as the preamble of the article states, it comes up only when there is an emergent situation as far as the financial stability is concerned. I have no apprehension that this article will be misused by the President, and with these words, I commend it to the House.

Pandit Hirday Nath Kunzru : Mr. President, the Mover of the amendment excused himself for not justifying the amendment by saying that it was certain that every Member understood its need. That was a very easy way for him of getting rid of his responsibility. He made a show of defending the amendment by referring to the American National Recovery Act. Now, the American National Recovery Act was meant to enable the American nation to tide over the great economic depression that had overcome the United States of America along with the other countries of the world in the thirties. Is there anything in this amendment that will enable the Government of India to deal with an economic depression when it comes in the same way in which President Roosevelt tried to deal with it? The whole object of the amendment seems to be to reduce expenditure and to prevent the provincial Governments from giving up any of their existing sources of revenue. Can an amendment with this purpose be said by any stretch of language to resemble even remotely the National Recovery Act of the United States?

Sir, every Member of this House I am sure will admit that the power that is being conferred on the Central Government is a drastic power. It is necessary therefore for us to understand why article 280A is proposed to be inserted

in the Constitution at the fag-end of the debate on the Second Reading of the Constitution. This matter, if it is of cardinal importance, could have been dealt with along with the other financial provisions contained in the Constitution. But the fact that this was not done shows that there was no general need felt at the time the financial articles were considered for enabling the Central Government to- exercise complete budgetary control over the provinces. What has occurred since then to justify this amendment? Sir, clause (4) of the amendment refers to certain matters that may be included in the directions given by the President when a Proclamation has been issued declaring that the financial stability or credit of India or of any part of it is threatened. The President will have the power to direct any state to observe such 'canons of financial propriety' as may be specified in the directions given by him. Clause (4) is illustrative of the directions that the President may issue. Sub-clause (a) of this clause empowers the President to require a State to reduce the salaries and allowances of all or any class of public servants. Sir, we had to go through a serious economic crisis not many years ago. It affected not merely the Central Government, but also the provinces. Were the provinces backward then in reducing their expenditure? Did they show any reluctance to reduce the salaries of their public servants or were they only too glad to follow the example of the Central Government and reduce the salaries of all classes of public functionaries? Why has it been necessary, with this experience before us, to propose such an amendment to this House? Is there any reason why, disregarding all past experience, we should show complete distrust of the provinces and treat them as though they were children and the President a village school master?

Sir, item (ii) of sub-clause (a) lays down that the President may require that all Money Bills or other Bills to which the provisions of article 182 of the Constitution apply shall be reserved for his consideration after they are passed by the Legislature of the State.

The House knows what the definition of a Money Bill is. A Money Bill is any Bill that provides among other things for the imposition, abolition, remission, alteration or regulation of any tax. I think these words give us a clue to the significance of the amendment that has been placed before us. A Province can by itself hardly do anything that would jeopardise the financial stability or credit of India. It can at the most injure itself. But if we turn to the provincial sources of revenue that are enumerated in the Provincial List, we shall find that there is hardly any source the use of which can be a danger to the financial stability of the Centre or of a province. Even if a province by its foolishness places itself in a difficult financial position, why should it not be allowed to learn by its mistakes ?

Perhaps, Sir, it will interest the House if I enumerate the chief sources of provincial income. They are chiefly land revenue, stamp duties other than those mentioned in the Union List, estate and succession duties on agricultural land, income-tax on agricultural income, excise duties on alcoholic liquors, opium, etc., sales taxes including taxes on the consumption of electricity and taxes on luxuries including taxes on entertainments and amusements.

Shri T. T. Krishnamachari : What about vehicles tax?

Pandit Hirday Nath Kunzru : I have not mentioned it because vehicles tax, etc. are generally used for the benefit of local bodies. Now, which of these source of revenue can be misused by the provinces? If the policy that has been followed by certain provinces with the approval of the Centre is followed by other provinces, land revenue is bound to go down, and its reduction cannot be a grievance to the Central Government. The provincial governments have so far shown no reluctance to increase the rates of stamp duties, or to make as much use as they can of sales taxes or taxes on agricultural income. The only tax in

[Pandit Hirday Nath Kunzru]

respect of which a serious difference of opinion has arisen between the Central Government and some of the provincial governments is the excise duty on alcoholic liquors and certain narcotics. Some provinces, notwithstanding, I understand, the advice repeatedly given to them by the Government of India, have persisted in following a policy of prohibition, which will lead in course of time to a complete abolition of the revenue from excise duties. The advice given by the Central Government may be perfectly right. The present situation may well in the opinion of students of Indian finance require that the provinces should proceed slowly in respect of the introduction of measures leading to complete prohibition. The Centre and the provinces alike are faced with financial difficulties, and it does not seem to be right that at a time like this any province should try to forego any large source of revenue. It may in theory be desirable to bring about a complete cessation of the use of alcoholic liquors and narcotics, but we cannot have all the good things of the world at once. It will therefore be necessary for the provinces to exercise self-restraint and wait for better times to bring about this reform.

But if they do not listen to the Central Government, is this any reason why so drastic a power as article 280A will confer on the Government of India should be taken so that the provinces may be able to do nothing contrary to the wishes of the Central Government once the President has proclaimed that the financial stability not merely of the whole of India but of any part of it is threatened? Whenever there is serious disagreement between a province and the Central Government, the President can always be persuaded to say that the financial stability or credit of the province is in danger, and then the consequences envisaged by article 280A will follow. The Centre will acquire complete control over the budget of the province and will be able to dictate both to the provincial government and to the provincial legislature what financial policies they should adopt.

This is not a measure for bringing about a better distribution of the resources of India between the Centre and the provinces. This is not meant to enable the Central Government to deal with unemployment relief, or public works, or any of those problems whose solution would lead to economic contentment and add to the wealth of India. The object of this measure is totally different. As the Mover of the amendment has prudently abstained from giving any reasons justifying the amendment, we have to 'think- for ourselves and find out as best we may what may have induced the Central Government to agree to the insertion of such an article into the Constitution. Thinking over the recent financial history of these provinces, I can discover no reason for the anxiety of the Central Government to have the power to exercise financial control over the provinces except the one that I have given.

It is for the House to determine whether the Constitution which our Prime Minister stated in his address before the American House of Representatives and the Senate the other day, followed the principle of federalism which had been borrowed from the American Constitution, should for all practical purposes be converted into a unitary Constitution. Even if the Constitution were unitary, would it be wise for the Central Government to try to curb the financial discretion of the provinces even if their measures were likely to injure them? How is democracy to be established in the provinces, how is a sense of responsibility to be created among the legislators, how are the Ministers to learn by experience unless they are left to face the consequences of their mistakes? If the Centre wants to step in at every turn, if it wants that it should be able to exercise such complete control that nothing that was harmful to the interests of any province or of India might be allotted to be done, then we must say goodbye to democracy. The Centre will certainly be glad to exercise even greater control than is given

to it by this Constitution, if we may judge from the facts that we have before us, if we may judge from past experience. But this will not put it right and I venture to say that the mover has not made out the slightest justification for the acceptance of his amendment,

Shri K. M. Munshi (Bombay: General): Mr. President, Sir, I can easily appreciate the feelings of my honourable Friend, Pandit Kunzru, in opposing this 28A but he will also realise the grave situation to which reference has already been made by my Friend, Dr. Ambedkar. The debate in the Parliament, in the other part of the House, a fortnight ago, clearly showed that the country is on the brink of a precipice, and I do not think that the crisis which we are facing now is in any way less important than what faced France in 1937 when it passed the law of June 1937 or a similar measure passed by the United States of America in 1933. If I may read the preamble of the N.R.A. which America adopted:

“A national emergency productive of widespread employment and disorganization to industry which burdens the State and foreign commerce and affects the public welfare and under mines the standard of living of the American people is hereby said to exist.”

If my honourable Friend, Pandit Kunzru reads the speeches made by the Members of this House and the Finance Minister on the devaluation debate, I am sure he will feel convinced that a situation like the one which is before the country may require wider powers in the Centre of the nature of those that are contained in article 280A. His fears that there, will be multiplication of functionaries is not real because the Centre, when it acts under this article 280A, will act through the functionaries of the State itself. It is not going to employ its own machinery in place of the provincial machinery. The other argument that the provinces can do nothing without the permission of the Centre is also not quite correct. In normal circumstances, when the finances of the country are stable, so long as the credit of the country stands, there is no chance of this article being brought into force. It is only when there is a financial emergency that it has to be brought into force and till then the provinces are completely free to do what they like. The attitude is not “school masterly” as suggested. The attitude is that the Centre will step in at the time when there is a breakdown in the financial structure of the country.

This article in the Constitution is the realization of one supreme fact that the economic structure of the country is one and indivisible. If a province breaks financially, it will affect the finances of the Centre: if the Centre suffers, all the provinces will break. Therefore the interdependence of the provinces and the Centre is so great that the whole financial integrity of the country is one and a time might arise when unitary control may be absolutely necessary.

Sir, I may mention that the different articles which this House has passed so far provide that in an emergency, and even in ordinary times, there be a certain amount of integration between the Centre and the provinces. I will only refer to article 226 under which a vote of the Upper House can rule that an item in the State List should be transferred to the Centre. We have the nominated Governors, whom we accepted in place of elected Governors. We have also the emergency sections in articles 275 and 278; when the constitutional structure of a province breaks down the Centre can interfere. When, for instance, internal disturbance threatens any part of the country, the Centre can interfere by emergency legislation. But is it suggested that if there is a financial breakdown of the whole country the Centre must sit idle and do nothing? I submit, therefore, that we have not so far departed from the fabric which we have raised.

Only one word more and I have done, my Friend, Pandit Kunzru, has said that the mover of the article, Dr. Ambedkar, has not explained the object of the measure. I think the object of the measure is patent on the face of it. It is

[Shri K. M. Munshi]

not merely the desire of this Government that they should interfere in the provinces but it should be the desire of every Government in India to see that the financial stability of India is maintained at any cost and under all circumstances. This is the primary consideration before any Government, either this or any, other.

We have in the preamble, which will come before the House tomorrow, said that the sovereign people of India make this Constitution. The sovereign people are not all the people but the sovereign people of India as one unit acting through its supreme organ, the Constituent Assembly, which is creating the Constitution for the country as a whole. There is no provincial-autonomy, there is no federation by or for itself: these are not sacrosanct words. Every Government must satisfy the needs of the sovereign people of India. In a financial emergency there cannot be a greater privilege than that all financial affairs shall be controlled and directed from the Centre, as put forward in 280A. That is the object, and I submit it is an object without which the Constitution would remain incomplete and I invite the House to carry this article unanimously.

Mr. President : Have you anything to say?

The Honourable Dr. B. R. Ambedkar : If you think it is necessary, I will speak.

Mr. President : No, no. I do not say so. Then I will put the amendment to the vote.

Shri H. V. Kamath : I suggest that Dr. Ambedkar might consider the change of the wording from "threatened" to "gravely threatened".

Mr. President : You did make your suggestion. He will consider whether it is worth considering. I do not think I should allow you to make a second speech in the form of a suggestion to Dr. Ambedkar.

Shri Rohini Kumar Chaudhuri (Assam : General): I wanted to make my only speech.

Mr. President : But I have already closed the debate.

The question is:

"That in amendment No. 429 of List XVIII (Second Week), in clause (1) of the proposed now article 280A, for the words 'has arisen' the words 'is imminent' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 429 of List XVIII (Second Week), in clause (1) of the proposed new article 280-A, for the words 'whereby the financial stability or credit of India or of any part of the territory thereof is threatened', the words which threatens India or any part thereof with financial break down or economic disaster', be substituted.

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 429 of List XVIII (Second Week), in clause (1) of the proposed new article 280-A, after the word 'threatened' the words 'or is likely to be threatened' be inserted."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 429 of List XVIII (Second Week), for clause (2) of the proposed new article 280-A, the following be substituted:—

(2) The proclamation issued under clause (1) of this article shall continue till such time it is revoked by the President."

The amendment was negatived.

Mr. President : The question is:

“That in amendment No. 429 of List XVIII (Second Week), in clause (3) of the proposed new article 280-A, after the word ‘operation’ the words ‘Parliament shall have Power to make laws in respect of subjects contained in the State List as if they were subjects in the Concurrent List, and’ be inserted.”

The amendment was negatived.

Mr. President : The question is:

“That in amendment No. 429 of List XVIII (Second Week), clause (4) of the proposed new article 280-A be deleted.”

The amendment was negatived.

Mr. President : The question is:

“That in amendment No. 429 of List XVIII (Second Week), for paragraph (ii) of sub-clause (a) of clause (4) of the proposed new article 280-A, the following be substituted:—

- (ii) a provision requiring all Bills to be reserved for the consideration of the President after they are passed by the Legislature of the State.’ ”

The amendment was negatived.

Mr. President : The question is:

“That in amendment No. 429 of List XVIII (Second Week), clause (5) of the proposed new article 280-A be deleted.”

The amendment was negatived.

Mr. President : I shall now put the original amendment of Dr. Ambedkar. The question is:

“That after article 280, the following new article be inserted:—

‘280A. (1) If the President is satisfied that a situation has arisen whereby the financial stability or credit Provisions as to financial of India or of any part of the territory thereof is threatened, he may by a proclamation make a declaration to that effect.

- (2) The provisions of clause (2) of article 275 of this Constitution shall apply in relation to a proclamation issued under clause (1) of this article as they apply in relation to a Proclamation of Emergency issued under clause (1) of the said article 275.
- (3) During the period any such proclamation as is mentioned in clause (1) of this article is in operation, the executive authority of the Union shall extend to the giving of directions to any State to observe such canons of financial propriety as may be specified in the directions, and to the giving of such other directions as the President may deem necessary and adequate for the purpose.
- (4) Notwithstanding anything contained in this Constitution—
 - (a) any such direction may include—
 - (i) a provision requiring the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of a State;
 - (ii) a provision requiring all Money Bills or other Bills to which the provisions of article 182 of this Constitution apply to be reserved for the consideration of the President after they are passed by the Legislature of the State;
 - (b) it shall be competent for the President during the period any proclamation issued under clause (1) of this article is in operation to issue directions for the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of the Union including the judges of the Supreme Court and the High Courts.
- (5) Any failure to comply with any directions given under clause (3) of this article shall be deemed to be a failure to carry on the Government of the State in accordance with the provisions of this Constitution.’ ”

The motion was adopted.

Article 280A was added to the Constitution.

Article 85

Mr. President : We shall now take up the other items.

Shri T. T. Krishnamachari : Sir, I move:

“That for clause (3) of article 85, the following clause be substituted:—

- ‘(3) In other respects, the privileges, immunities and powers of each House of Parliament and of the members and the Committees of each House shall be such as may from time-to-time be defined by Parliament by law, and until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom and of its members and committees at the commencement of this Constitution.

The reason for making this change is that the scope of the sub-clause has to be extended as the original clause merely referred to the privileges and immunities of Members only. All that the present clause seeks to do is to apply it to the two Houses to all the Members and to the Committees of each House. This has been necessitated by the reason of the fact that we have provided in entry 69, List I, Schedule VII the legislative power to Parliament in 69A. The legislative power reads:

“The privileges, immunities and powers of each House of Parliament and of the Members and Committee of each House.”

In order to bring sub-clause (3) of article 85 in line with that entry, this amendment has been moved. Honourable Members of the House will please see that it merely seeks to expand the privileges, immunities and powers from the members to the Houses and also to the Committees and it is a matter which will not invoke controversy as it is consequential on the House accepting 69A, List I, Schedule VII.

The Honourable Shri K. Santhanam : Clause (4) also provides the same Privileges to Committees as to the Members.

Mr. President : This refers to the House also, not only to the Members.

There is one amendment of which notice has been given by Shri Brajeshwar Prasad. But that is covered by another amendment—No. 397. Therefore this does not arise,

Shri Brajeshwar Prasad : But there are two parts (a) and (b) on the next page.

Mr. President : Yes, there is 3(b). But is this a matter for the Constitution? That the President shall issue a White Paper is not a matter for the Constitution. The President shall issue a White Paper if it is suggested to him or if a resolution, is passed in the Assembly.

Shri Brajeshwar Prasad : The whole purpose is to know what are the powers and privileges of the members of the House of Commons.

Mr. President : You may ask the President to issue that White Paper but it cannot form part of the Constitution.

Shri Brajeshwar Prasad : I can make a verbal change in this amendment.

Mr. President : I think we had better leave it alone.

Shri R. K. Sidhwa : Sir, when this article was discussed last time we were not certain what were the privileges of the Members of the Commons. I tried to find it out from May's Parliamentary Procedure but I could not. So, let us know something as to what are the privileges of the Members of the House of Commons. Otherwise a conflict may arise in Parliament. Until two or three years after the formation of Parliament these privileges may not be framed because I know that no act of privileges have so far been framed till now although under the Government of India Act, 1935 there is a provision that Members' Privileges may be framed; they have not been framed either in the Centre or in the provinces except in two Provinces.

The Honourable Dr. B. R. Ambedkar : Sir, I might with your permission inform my Friend Sidhwa that since the time when the discussion took place I

made a little research and I find that the South African Parliament has passed an Act defining the immunities and privileges. I have got a copy; if he wants. I can transmit it for his study. It might be possible later on for our own Parliament to embody the privileges.

Shri Brajeshwar Prasad : Sir, in amendment No. 419 the words “Provincial Parliament” occur. This is a printing mistake. The word is not “Provincial”, but “Provisional”. This is a separate amendment which has not been moved by anybody else. May I move it?

Mr. President : I suppose the Provisional Parliament has got all the powers and privileges of the Parliament which will be of a permanent nature. So this does not arise really.

Shri Mahavir Tyagi : Could we not leave this power to the Parliament itself to decide?

Mr. President : That is exactly what the article says. The Parliament will define the powers and I privileges, but until the Parliament has undertaken the legislation and passes it the privileges and powers of the House of Commons will apply. So, it is only a temporary affair. Of course the Parliament may never legislate on that point and it is therefore for the Members to be vigilant.

Shri H. V. Kamath: Will it be open to the Provisional Parliament to define these powers ?

Mr. President : Certainly, it will be open to it, if it chooses to do it.

Shri B. Das : Sir, in this amendment No. 419, is it the “*Provincial* Parliament” or the “*Provisional* Parliament”?

Mr. President : It is a mistake. It ought to be “Provisional Parliament”. When Mr. Brajeshwar Prasad pointed it out I did not follow him. It is a mistake in printing. So, the Provisional Parliament has the same right as the permanent Parliament. Is any discussion necessary? So, I will put this amendment to vote.

The question is:

“That for clause (3) of article 85, the following clause be substituted—

- (3) In other respects, the privileges, immunities and powers of each House of Parliament and of the members and the committees of each House shall be such as may from time to time be defined by Parliament by law, and until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom and of its members and committees at the commencement of this Constitution.’ ”

The amendment was adopted.

Article 111

Shri T. T. Krishnamachari : Mr. President, Sir I move:

“That for the proviso to clause (1) of article 111, the following proviso be substituted:—

- ‘Provided that no appeal shall lie to the Supreme Court from the judgment, decree or final order of one judge of a High Court.’ ”

This, in effect, simplifies the position as it now is. The present proviso is a longish one. The present proviso which the amendment seeks to supplant reads thus:—

- “Provided that no appeal shall lie to the Supreme Court from the judgement, decree or order of one judge of a High Court or of one judge of a Division Court thereof, or of two or more judges of a High Court, or of a Division Court constituted by two or more judges of a High Court, where such judges are equally divided in opinion and do not amount in number to a majority of the whole of the judges of the High Court at the time being.”

It is felt that this is not necessary by reason of the fact that this was borrowed from the original Letters Patent, which was amended in 1928. The amended

[Shri T. T. Krishnamachari]

Letters Patent, as it is applied to our courts is simpler than this longish proviso and the purport of it was more or less analogous to the provision that we are now seeking to introduce as a proviso to article 111, instead of the original proviso. I do not think there is any scope for discussion in this particular matter, because what is done by this amendment is to simplify and restrict the limitation that is put in regard to appeals to the Supreme Court. If honourable Members are satisfied with this explanation it can go through. If, on the other hand, they want an elaborate explanation of the whole question of how the powers of benches in the high courts were affected by the Letters Patent, and how much we have borrowed there from. I think my honourable Colleague Mr. Alladi Krishnaswami Ayyar is prepared to satisfy Members on this particular point.

Sir, I move.

Mr. President : The question is:

“That for the proviso to clause (1) of article III, the following proviso be substituted :

‘Provided that no appeal shall lie to the Supreme Court from the judgement, decree or final order of one judge of a High Court.’ ”

The amendment was adopted.

Article 112

Shri T. T. Krishnamachari : Sir, I move:

“That with reference to amendment No. 364 of List XV (Second Week), for article 112, the following article be substituted:-

‘112. (1) The Supreme court may, in its discretion, grant special leave to appeal from any judgement, decree, determination sentence or order in any cause or matter passed or made by any Court or tribunal in the territory of India.

Special leave to appeal by the Supreme Court.

(2) Nothing in clause (1) of this article shall apply to any judgement, determination, sentence or order passed or made by any court of tribunal constituted by or under any law relating to the Armed Forces.’ ”

The amendment to clause (1) of article 112 as it now stands is a very simple one. The words “final order” in the original article are sought to be removed and revised by the insertion of the words “determination, sentence or order” So far as clause (2) is concerned, the amendment must be perfectly clear to honourable Members. It seeks to exclude from the jurisdiction of the Supreme Court (the omnibus jurisdiction which article 112 confers on it) any decision of a court-martial covering matters which relate to the armed forces and matters which are governed by the Army Act. I understand that this follows the practice that now obtains in the U.K. where courts do not interfere with the decisions of the court-martial. I would at once confess that this matter, which escaped our attention at the time this article was framed and put before the House, has now been brought to our notice by the Defence Department, who have convinced us that a provision of this nature which obtains currency in other countries should also find a place in our Constitution.

Sir, if you would permit me I would like to move also another amendment which relates to the same subject, so that discussion on the whole matter might be taken up together.

Sir, I move:

“That to article 203, the following clause be added, namely:—

‘(4) Nothing in this article shall be deemed to extend the powers of superintendence of a High Court over any court or tribunal constituted by or under any law relating to the Armed Forces.’ ”

Clause (4) of article 203 and clause (2) of article 112 deal with the same subject. In the case of article 203 it seeks to prohibit the jurisdiction of the High Courts extending to courts-martial, whereas a similar restriction in regard to the Supreme Court is contemplated under article 112. The reason for introducing these two new amendments is the view expressed by the Defence Ministry that such protection is necessary in respect of the decisions of courts-martial which deal with the Armed Forces and the analogy of what obtains in other countries was brought before us. We therefore felt that there was a case for putting in a provision of this nature in articles 112 and 203.

Prof. Shibban Lal Saksena : Sir, I move:

“That in amendment No. 421 of List XVIII (Second Week), clause (2) of the proposed article 112 be deleted.”

I wish to bring a charge of breach of faith against Dr. Ambedkar in this matter. Sometime ago I had tabled an amendment to article 112A in which I had specially desired that provision should be made that persons sentenced to death by courts-martial should be able to appeal to the Supreme Court. Dr. Ambedkar assured me that such persons are covered by article 112 and the Supreme Court can take notice of such persons under its powers under article 112. Probably a report of the discussion in the House appeared in the papers and the Defence Department has tried to strengthen itself against the protection given by this article to persons condemned by courts-martial. And therefore Dr. Ambedkar has been asked to table this amendment. Mr. T. T. Krishnamachari just now said that this was necessary because the Defence Department wants so. Probably they have read the report of the discussion and that is why they have asked for this provision.

I therefore, think, Sir, that this is not fair. I had withdrawn my amendment that day on the assurance that this will be covered by this article and now just the reverse provision is being made and it is going to be accepted. I have seen and heard many Judge-Advocates who deal with these military courts-martial and they say that they are the persons who prepare the prosecution and they are also the persons who hear the cases and then give the judgement and if any Judge-Advocate made frequent decisions against cases prepared by himself, then he is also dismissed by the military authorities. They do not like that these cases should be dismissed. I think, Sir, this is a grave matter. Recently after the War in Britain also a Commission was appointed to study the administration of these military courts-martial and they also recommended that the procedure should be made more civilized and in the name of discipline the people should not be butchered. I have seen that the present procedure of Judge-Advocates is something against all the laws of jurisprudence and I think that at least persons convicted of death should have the right of appeal to the Supreme Court after their judgements. I consider that this provision is not only unfair but is also against the promise given to me by Dr. Ambedkar on a previous occasion.

Shri R. K. Sidhwa : Mr. President, Sir, I have my doubts about this clause. I am in entire agreement regarding protection to be given to Armed forces and with the decision that martial law should not be subject to the revision by the Supreme Court. To that extent I am agreeable, but I can show a number of cases where a number of armed forces are involved with a number of the civil population. Sir, there have been many cases of military motor drivers who have met with accidents and killed a number of civilians and those cases are tried by court-martial and in almost 90 per cent of the cases the civilians, poor fellows, had to suffer. They do not get any compensation and nor justice nor is the military driver punished in any way or sentenced. My point, therefore, is that the Drafting Committee in the interests of the civilian population will kindly bear this matter in mind and make some arrangement or provision here that the civilian

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population who suffer from these accidents should be protected. They should not be tried by martial law. I can state a number of cases and if these cases are tried by the civil courts, there would have been fair trial. In the civil and criminal courts they get compensation and also subject to punishment. On account of this lacuna many of the drivers are so rash that they drive rash and kill many civilians. I draw the attention of the Honourable Dr. Ambedkar to this matter. Probably this matter did not come to his notice before, but this is a very important matter and while we want the armed forces to be protected and their appeal should not come to the Supreme Court, the civilians ought equally to be protected.

Shri B. Das : I wish Dr. Ambedkar should make it clear whether the tribunal in the territory of India applies to the Income-tax tribunal or the different Railway tribunals that we have. If the power is extended, then the Income-tax tribunal must be dissolved at once. We have got the Income-tax tribunal which is the final authority.

The Honourable Dr. B. R. Ambedkar : Are they relevant to this discussion? How does the Income-tax tribunal come here?

Shri B. Das : In this article it is stated:—

“The Supreme Court may, in its discretion, grant special leave to appeal from any judgement, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.”

I only wish to be assured by you that the ‘tribunal’ does not mean the Income-tax tribunal.

The Honourable Dr. B. R. Ambedkar : You said other personnel also. So far as my memory goes, this has been amended to make provision for income-tax cases also to be taken up in the Supreme Court. I know that it has been amended.

Pandit Thakur Das Bhargava : Sir, in my humble opinion clause (2) seems to be very wide and unnecessary. It reads as follows:

“Nothing in clause (1) of this article shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.”

So far as offences relating to the military personnel and military offences are concerned, they may be immune from the jurisdiction of the Supreme Court; but there are many laws relating to the Armed Forces which countenance the judgments etc. by courts constituted under those Acts and the accused in those cases are the civilian population or military personnel accused of civil offences. In regard to say, the Cantonment Act or in regard to the Territorial Forces Act, there are some offences in which the members of the civil population are accused and there is no reason whatsoever why such sentences should not be subject to the jurisdiction of the Supreme Court. I therefore think that this clause is too widely worded and needs amendment.

The Honourable Dr. B. R. Ambedkar : Mr. President Sir, in view of the observations made by my honourable Friend, Prof. Shibban Lal Saksena, it has become incumbent upon me to say something in relation to the proposed article moved by my honourable Friend, Mr. T. T. Krishnamachari. It is quite true that on the occasion when we considered article 112 and the amendment moved by my honourable Friend, Prof. Shibban Lal Saksena. I did say that under article 112 there would be jurisdiction in the Supreme Court to entertain an appeal against any order made by a Court-martial. Theoretically that proposition is still correct and there is no doubt about it in my mind, but what I forgot to say is this: That according to the rulings of our High Courts as well as the rulings of the British courts including those of the Privy Council, it has been a well recognized principle that civil courts, although they have jurisdiction under the statute will not exercise that jurisdiction in order to disturb any finding or decision given or order made by the Court-martial. I do not wish to go into the reason why

the civil courts of superior authority, which notwithstanding the fact that they have this jurisdiction have said that they will not exercise that jurisdiction; but the fact is there and I should have thought that if our courts in India follow the same decision which has been given by British courts—the House of Lords, the King's Bench Division as well as the Privy Council and if I may say so also the decision given by our Federal Court in two or three cases which were adjudicated upon by them—there would be no necessity for clause (2); but unfortunately the Defence Ministry feels that such an important matter ought not be left in a condition of doubt and that there should be a statutory provision declaring that none of the superior civil courts whether it is a High Court or the Supreme Court shall exercise such jurisdiction as against a court or tribunal constituted under any law relating to the Armed Forces.

This question is not merely a theoretical question but is a question of great practical moment because it involves the discipline of the Armed Forces. If there is anything with regard to the armed forces, it is the necessity of maintaining discipline. The Defence Ministry feel that if a member of the armed forces can look up either to the Supreme Court or to the High Court for redress against any decision which has been taken by a court or tribunal constituted for the purpose of maintaining discipline in the armed forces, discipline would vanish. I must say that that is an argument against which there is no reply. That is why clause (2) has been added in article 112 by this particular amendment and a similar provision is made in the provisions relating to the powers of superintendence of the High Courts. That is my justification why it is now proposed to put in clause (2) of article 112.

I should, however, like to say this that clause (2) does not altogether take away the powers of the Supreme Court or the High Court. The law does not leave a member of the armed forces entirely to the mercy of the tribunal constituted under the particular law. For, notwithstanding clause (2) of article 112, it would still be open to the Supreme Court or to the High Court to exercise jurisdiction, if the court martial has exceeded the jurisdiction which has been given to it or the power conferred upon it by the law relating to armed forces. It will be open to the Supreme Court as well as to the High Court to examine the question whether the exercise of jurisdiction is within the ambit of the law which creates and constitutes this court or tribunal. Secondly, if the court-martial were to give a finding without any evidence, then, again, it will be open to the Supreme Court as well as the High Court to entertain an appeal in order to find out whether there is evidence. Of course, it would not be open to the High Court or the Supreme Court to consider whether there has been enough evidence. That is a matter which is outside the jurisdiction of either of these Courts. Whether there is evidence or not, that is a matter which they could entertain. Similarly, if I may say so, it would be open for a member of the armed forces to appeal to the courts for the purpose of issuing prerogative writs in order to examine whether the proceedings of the court martial against him are carried on under any particular law made by Parliament or whether they were arbitrary in character. Therefore, in my opinion, this article, having regard to the difficulties raised by the Defence Ministry, is a necessary article. It really does not do anything more but give a statutory recognition to a rule that is already prevalent and which is recognised by all superior courts.

I am told that some people feel some difficulty with regard to the law relating to the armed forces. It is said that there are many persons in the armed forces who are really not what are called men of the line, men behind the line. It seems to me quite impossible to make distinction between persons who are actually bearing arms and others who are enrolled under the Army Act, because the necessity of discipline in the armed forces is as great as the necessity of

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maintaining discipline among those who are not included among the armed forces.

My honourable Friend Mr. Sidhva raised the question that sometimes when a member of the armed forces commits a certain crime, kills somebody by rash driving or any such act, he is generally tried by court-martial, and there is nothing done so as to bring him to book before the ordinary courts of criminal law. Well, I do not know; but I have no doubt in my mind that so far as a member of the armed forces is concerned, he is subject to double jurisdiction. He is no doubt subject to the jurisdiction of the court which is created under the military law. At the same time, he is not exempt from the ordinary law of the land. If a man, for instance, commits an offence which is an offence under the Indian Penal Code and also under the Army Act, he will be liable to prosecuted under both the Acts. If a member of the army has escaped any such prosecution, it is because people have not pursued the matter. The general theory of the law is that because a man becomes a member of the armed forces, he does not cease to be liable to the ordinary law of the land. He continues to be liable, but in addition to that liability, he takes a further liability under the Act under which he is enrolled.

Shri Mahavir Tyagi : Can he have two punishments for one crime?

The Honourable Dr. B. R. Ambedkar : Oh, yes.

Shri R. K. Sidhwa : Why not make it clear?

The Honourable Dr. B. R. Ambedkar : It is quite clear. Section 2 of the Indian Penal Code says: "Every person". "Every person" means high or low, armed or unarmed.

Mr. President : Mr. T. T. Krishnamachari, would you like to say anything after this?

Shri T. T. Krishnamachari : No, Sir.

Mr. President : I shall put the amendments to vote.

The question is:

"That in amendment No. 421 of List XVIII (Second Week), clause (2) of the proposed article 112 be deleted."

The amendment was negatived.

Mr. President : I shall put article 112 as proposed in amendment No. 421.

"The question is:

"That with reference to amendment No. 364 of List XV (Second Week), for article 112, the following article be substituted:—

'112. (1) The Supreme Court may, in its discretion, grant special leave to appeal from any Special leave to appeal by judgment, decree, determination, sentence or order in any cause or matter the Supreme Court. passed or made by any court or tribunal in the territory of India.

(2) Nothing in clause (1) of this article shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.'

The motion was adopted.

Article 112, as amended, was added to the Constitution.

Article 203

Mr. President : The question is:

"That to article 203, the following clause be added, namely:—

'(4) Nothing in this article shall be deemed to extend the powers of superintendence of a High Court over any court or tribunal constituted by or under any law relating to the Armed Forces.' "

The amendment was adopted.

Article 122

Shri T. T. Krishnamachari : Mr. President, Sir, I move.

“That in article 122A, after the words ‘In this Chapter’, the words and figures ‘and in Chapter VII of Part VI of this Constitution’ be inserted.”

This deals with a very simple matter. Article 122A deals with interpretation of the Constitution in so far as the Supreme Court is concerned. What is now sought to be done is that this clause in so far as it refers to interpretation of the constitution in reference to any substantial question of law shall apply to the Chapter relating to High Courts as well. It is a lacuna that was not noticed at the time this article was passed and is not a matter which really involves any substantial change. It is only filling up a lacuna which exists.

Mr. President : The question is

“That in article 122A, after the words ‘In this Chapter’ the words and figures ‘and in Chapter VII of Part VI of this Constitution’ be inserted.”

The amendment was adopted.

Article 130

Mr. President : We proceed to article 130.

Shri T. T. Krishnamachari : Sir, I move.

“That in clause (1) of article 130, for the words ‘may be exercised by him’, the words ‘shall be exercised by him either directly or through officers subordinate to him’ be substituted.”

Sir, the House to day passed after some discussion a similar-amendment in respect of article 42 which relates to the President. We have been seeking to import the same wording in respect of the executive powers of the Governor.

Mr. President : There was an amendment by Mr. Kamath to the other article. Probably there is similar amendment to this. Is it necessary to have a discussion on this?

Shri H. V. Kamath : My views, are that they are simply repeating the mistake I do not move my amendment.

Mr. President : The question is :

“That in clause (1) of article 130, for the words ‘may be exercised by him’ the words ‘shall be exercised by him either directly or through officers, subordinate to him’ be substituted”.

The amendment was adopted.

Article 169

Mr. President : We take up article 169.

Shri T. T. Krishnamachari : Sir, I move

“That for clause (3) of article 169, the following clause be substituted :—

- ‘(3) In other respects, privileges, immunities and powers of a House of the Legislature of a State and of the members and the committees of a House of such Legislature shall be such as may from time to time be defined by the Legislature by law, and until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom and of its members and committees at the commencement of this Constitution. ’ ”

This follows the line of similar amendment moved to clause (3) of article 85 and the House has accepted it and this merely seeks to put in the same set of provisions in respect of powers of the Houses of Legislature, the powers and privileges and immunities of members of the Committees of Houses of Legislatures.

Mr. President : We have just passed a similar provision with regard to Parliament. This relates to the Legislatures of the States.

The question is :

“That for clause (3) of article 162, the following clause be substituted:—

- (3) in other respects, privileges, immunities, and powers of a House of the Legislature of a State and of the members and the committees of a House of such Legislature shall be such as may from time to time be defined by the Legislature by law, and until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom and of its members and committees at the commencement of this Constitution.’ ”

The amendment was adopted.

Article 213-A

Mr. President : We go to article 213-A.

Shri T. T. Krishnamachari : I move:

“That in clause (1) of article 213-A for the words ‘for the purpose of this Constitution’ the words ‘for all or any of the purposes of this Constitution’ be substituted.”

This amendment relates to High Courts in State in Part II of the First Schedule and the words are merely an amplification of the original phraseology and there can be no objection to such amplification. I am advised that this is necessary by our legal advisers and that is why this amendment is being moved.

The Honourable Shri K. Santhanam : I am afraid we are going in for too many superfluous amendments.

Mr. President : Does anyone wish to say anything ? Mr. Santhanam thinks it is unnecessary and so does Pandit Bhargava. Mr. Krishnamachari, do you wish to say anything ?

Shri T. T. Krishnamachari : In this matter I am afraid we have to be guided by our Advisers.

The Honourable Shri K. Santhanam : Even if they have committed any mistake in the original draft, unless it is indispensable no amendment should be brought before us now.

Shri T. T. Krishnamachari : I am afraid we have committed another mistake in another article if I should accept the argument of my honourable Friend Mr. Santhanam. We have committed the mistake in 303 clause (1) item (11) sub-item (2). It says in the definition :—

“any other court in the territory of India which may be declared by Parliament by law to be a High Court for all or any of the purposes of this Constitution.”

If we have a definition of the High Court using these words, however, unnecessary it might appeal to some honourable Members of this House, I thought that it is best to bring it into line with the definition which will really be the governing factor in the interpretation of the article of this House.

An Honourable Member : If these are absolutely necessary, they can be brought in the Third Reading.

Mr. President : I do not think there is any real opposition to this but some Members consider it unnecessary.

The question is :

“That in clause (1) of article 213-A for the words ‘for the purposes of this Constitution’, the words ‘for all or any of the purposes of this Constitution’ be substituted.”

The amendment was adopted.

Article 215-A

Mr. President : We go to 215-A.

Shri T. T. Krishnamachari : I move:

“That article 215-A be deleted.”

This article refers to the Scheduled and Tribal Areas. It reads thus:—

“In this Constitution the expression ‘scheduled areas’ means the areas specified in Parts I to VII of the Table appended to paragraph 18 of the Fifth Schedule in relation to the States to which those parts respectively relate subject to any order made under sub-paragraph (2) of that paragraph.”

Then again there is definition of tribal areas.

Sir, the House has passed the Fifth and Sixth Schedule which completely cover all that is contained in these two clauses of article 215A. It is therefore considered unnecessary,

Mr. President : The question is :

“That article 215-A be deleted.”

The amendment was adopted.

Shri T. T. Krishnamachari : There is one item to be dealt with before going to the Preamble.

Maulana Hasrat Mohani (United Provinces : Muslim) : Sir, I object to putting here the Preamble at this fag-end of the day.

Shri T. T. Krishnamachari : We have not moved the Preamble. I suggest that article 13 be held over till tomorrow.

Shri R. K. Sidhwa : Sir, you have not put 445.

Mr. President : That is not in today’s agenda. I think this covers all the articles, except article 13, which are in today’s agenda. It is suggested that we might take up article 13 tomorrow as some Members have given notice of amendments and would like to have a little more time for consideration. Mr. Sidhwa did you refer to 302AA ? It is coming up tomorrow. Shall we take up the Preamble tomorrow ?

Honourable Members : Tomorrow.

Mr. President : The paper which has been circulated today also has some other articles. All this we shall have to dispose of tomorrow including the Preamble.

The Honourable Shri K. Santhanam : The Drafting Committee may consider whether any of them are indispensable; otherwise they may come in the Third Reading as consequential amendments. We need not spend much time on consequential amendments.

Mr. President : There is not much there with regard to amendments to clauses which have been passed. The others are substantial propositions. Ofcourse the Drafting Committee will naturally consider whether it is worth while pressing those amendments.

Shri. R. K. Sidhwa : Do we understand that tomorrow by evening we end the session ?

Mr. President : It all depends upon you. The Drafting Committee is not apart from you. It includes everybody in the House.

Then we shall adjourn now till, what time tomorrow ? When do we meet tomorrow?

The Honourable Members : Nine o’clock, tomorrow morning.

Mr. President : Very well, if that is the wish of the House, I have no objection. We may meet at 9 o’clock so that we may have four hours to finish all this.

The House stands adjourned till nine o’clock tomorrow morning.

The Assembly then adjourned till Nine of the Clock on Monday, the 17th October 1949.

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CONSTITUENT ASSEMBLY OF INDIA

Monday, the 17th October 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

MOTION—*RE.* ALLOWANCES OF MEMBERS

Mr. President : We shall first take up the motion standing in the name of Shri Muniswamy Pillay.

Shri V. I. Muniswamy Pillay : (Madras : General) : Mr. President, with your permission, I beg to move :

“That the following amendments be made in the Rules governing the allowances of Members of the Constituent Assembly of India:—

- (1) That in rule (D), relating to daily allowances, in paragraph 4 of the Handbook for Members, and in paragraph 8 (relating to allowances admissible to Members residing at the place where the Assembly meets) of the said Hand book, for the figure, brackets and words ‘Rs. 45 (Rupees forty five)’, the figure, and words ‘Rs. 40 (Rupees forty)’ be substituted.
- (2) That exception (c) to Note I under rule (A) in paragraph 4 of the Handbook for members, be deleted.”

Sir, this motion has been brought before the House for certain reasons. Everyone of the members of this august Assembly knows the present general economic condition in India and also the prevailing financial stringency. There has been a cry throughout this country that some savings must be made here and there to help the Government. This motion I have moved shows that the Members who are entitled to Rs. 45 per day by way of daily allowance shall forego 11 per cent. of it which makes it Rs. 40. I know as a matter of fact that this is a small sacrifice. This august Body has to give a lead to the country to improve the economic conditions that prevail today.

Sir, this sum of Rs. 40 to which we propose to reduce our daily allowance does not represent our salary. This matter was before the Staff and Finance Committee and the Members thereof felt that this should be placed before the Constituent Assembly. The Members are offering to cut down their daily allowance by 11 per cent. voluntarily. I contacted many Members of this August Assembly and found that they are all unanimously of the opinion that a five rupee cut in the daily allowance will not be a hardship. In the circumstances I hope the House will give its consent to reduce the daily allowance of Members from Rs. 45 to Rs. 40.

The second part of my amendment is that exception (c) to Note I under rule (A) in paragraph 4 of the Handbook for Members be deleted. As one coming from Madras I know as a matter of fact that there is arrangement for running a restaurant car from Delhi to Balharshah and also from Balharshah to Delhi in the train service. This arrangement gives some convenience to Members for their meals and other things. At one time there was a feeling that this restaurant car was not meeting the demands mostly of the western style. But the present arrangement which is mostly of the Indian type caters both to vegetarians and non-vegetarians. The arrangements made in this respect from Delhi to Madras and back are in my opinion satisfactory. Of course, from Balharshah to Madras, the arrangement is not completely satisfactory, because the restaurant car is

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detached at Balharshah. But there are first class refreshment rooms and there are caterers who wait on the passengers at every important station and take orders and supply dinner and other things either in the train itself or at the halting places.

These two changes in the rules are therefore necessary and I hope the Members will vote unanimously for this motion.

Mr. President : There is notice of an amendment to this motion by Shri Shankarrao Deo.

Shri Shankarrao Deo (Bombay : General) : I am not moving my amendment, Sir.

Shri H. J. Khandekar (C. P. & Berar: General) : *[Mr. President, Sir I beg to move: my amendment which I have tabled in respect of the motion under discussion which has been moved by Shri Muniswamy Pillay proposing that the present amount of daily allowances to the Members of the Constituent Assembly should be reduced from rupees forty-five to forty only.

The amendment reads:

“That in the amendments to Rule(D), and to paragraph 8, for the proposed figure, brackets and words ‘Rs. 40 (Rupees forty)’ the figure, brackets and words ‘Rs. 20 (Rupees twenty)’ be substituted.”

In my amendment I propose that Members should draw only rupees twenty for their daily allowance. There is a reason, Sir, for my suggesting this amendment and it is this. While we were fighting for freedom, every one of us, and I may say millions of our countrymen made every possible sacrifice that was needed to make our country free. After the country had made a lot of sacrifices through the efforts and kindness of Mahatmaji we achieved Swarajaya and made our country free. But after independence, I am sorry to say, Sir, such an atmosphere has grown in the country that everyone who took part in the freedom struggle wants now to earn more and to lead a pleasant and prosperous life. We are, no doubt, free now; but to retain our freedom it is necessary for every one of our countrymen to make sacrifices, for if we do not make sacrifice for the security of our freedom, and the conditions that are obtaining at present in the country continue further, I am afraid, we may be overtaken by chaos and our freedom may turn out to be a short-lived one. The financial position of the Government of the country is getting worse and worse and we should, therefore, make all possible sacrifices to improve it.

From the very start ours has been an organisation of selfless people. There was an amendment in the name of Shri Shankarrao Deo which he has not moved; I wish he had moved his amendment. The amendment he has sent in is not be fitting a person of his standing who in his renouncing spirit has discarded even Kurta and Topi and does not put on Dhoti of the usual length of nine cubits. An amendment from him should have said that the Members should not take even a pie for their allowance.

He is a bachelor, I mean to say he is unmarried. Secondly, he has no family; and thirdly, his dress is much simpler than ours. I say he is a great and selfless person, nay I should say he is a sage or *sanyasin*. It was not proper for a great and selfless sage like him to have sent in an amendment like the one he has tabled.

*[]Translation of Hindustani speech begins.

Shri M. Satyanarayana (Madras: General) : May I ask if it is proper for us to speak in this strain about any person ?

Shri H. J. Khandekar : I am not speaking anything against him, rather I am expressing admiration for him; I consider him a selfless person and a sage and this is what I have said about him. I do not think that there can be any objection against the terms I have used about him. I only mean to say that an amendment from a leader like him should have been to the effect that the Members should not take even a pie as allowance.

Sir, I am a family man; I have my family and children, whom I have to provide for. I require clothes and house for them. It is, therefore, natural that I may take some amount as allowance. But at the same time I do wish to make some sacrifice. So, maintaining a balance between our requirements and the sense of sacrifice, I have moved my amendment and every Member of the House who is at least of my status and not that of Shri Shankarrao Deo, should accept a minimum allowance of rupees twenty a day. My amendment, Sir, is quite reasonable. Every Member who has so far been making sacrifices should continue to make sacrifice in future also. I believe for a selfless person, my amendment alone is right and every selfless person should accept it.

Outside this House we hear every one exhorting for sacrifice. We hear talks for making sacrifice from the Members of this House and from the Congress platform. Our leaders are also making constant requests to all to make all possible sacrifice for the country. If we, therefore, accept the amendment of Shri Muniswamy Pillay which lays down a nominal sacrifice of rupees five only, it would not be decent and proper for the honourable Members of this House. This sacrifice is not in conformity with the dignity of the Members of the House. If you go to villages and say that you have sacrificed rupees five a day from your income, the people will laugh at you.

Shri Shankarrao Deo: Is there any discussion necessary on this point ?

Shri H. J. Khandekar : I am about to conclude my observations now, So in view of what I have said, Sir, my amendment is very proper and I hope the House will accept it.]

(Shri R. K. Sidhwa rose to speak.)

Mr. President : Is there any discussion necessary ?

Honourable Members : The question may now be put.

Shri R. K. Sidhwa : (C. P. & Berar : General) : Sir, I wholeheartedly support the motion moved by...

Mr. President : What is the use of this discussion ?

Shri R. K. Sidhwa : Sir, the only point that I want to make is that the cut should be voluntary. The Ministers are also having a cut voluntarily. We can unanimously make a declaration in the House that we shall also forego Rs. 5 a day. That will be more graceful than amending the rules and making it compulsory. Nothing else.

Mr. President : Mr. Sidhwa's point is that instead of amending the rules, let it be in the form of a resolution which every Member will undertake to follow. His point is that instead of making it compulsory by an amendment of the rules, let it be in the form of, a resolution which every Member will accept.

*[Translation of Hindustani speech ends.

Shri V. I. Muniswamy Pillay: May I say a few words about the amendment moved by Mr. Khandekar. So far as Mr. Sidhwa's point is concerned, a resolution practically comes to the same thing.

Mr. President : How will the office prepare the bills ?

Shri R. K. Sidhwa: On the basis of the resolution.

Mr. President : No, the office cannot prepare the bills on the basis of a voluntary resolution, unless the Member concerned gives it in writing. Can you do that for every Member here? Every Member will have to do it individually.

Shri R. K. Sidhwa: The salary of the Ministers is regulated by in Act. The act is not amended. Yet the cut has been only voluntary. In this case also similar procedure should be adopted.

Mr. President : The Ministers are so few in numbers and all of them can give it in writing. But we are here more than three hundred. All of us are not present here.

Seth Govind Dass (C. P. & Berar : General) : For one thing, most of our Members are not here. Therefore, let the Assembly decide this question.

Shri V. I. Muniswamy Pillay: Sir, these rules were made by this Assembly and I think it is only proper that a motion should be moved and carried. Mr., Khandekar was referring to the question whether Members were having any extra expenses. I do think that is relevant. When we accepted the original motion in this House, no personalities were concerned or mentioned. There were some members here having their families and servants. Thus having two establishments entailing heavy expenses. At the time the rules were made the Assembly came to the unanimous conclusion by fixing the allowances at Rs. 45. Now, this motion seeks to reduce it by Rs. 5 and make it Rs. 40 and instead of the *circutous* route *via* Bombay and paying more money from the Government, we are providing for the shortest route and paying the amount which is actually due.

Mr. President : I will first put Mr. Khandekar's amendment to the vote. The question is :—

“That in the amendments to Rule (D) and to paragraph 8, for the proposed figure, brackets and words ‘Rs. 40 (Rupees forty)’ the figure, brackets and words ‘Rs. 20 (Rupees twenty)’ be substituted.”

Mr. President : The question is:

“That the following amendments be made in the Rules governing the allowances of Members of the Constituent Assembly of India :—

- (1) That in rule (D), relating to daily allowance, in paragraph 4 of the Handbook for Members, and in paragraph 8 (relating to allowances admissible to Members residing at the place where the Assembly meets) of the said Handbook for the figure, brackets and words ‘Rs. 45 (Rupees forty- five)’ the figure, brackets, and words ‘Rs. 40 (Rupees forty)’ be substituted.
- (2) That exception (c) to Note I under rule (A) in paragraph 4 of the Handbook for Members, be deleted’.”

The motion was adopted.

DRAFT CONSTITUTION—(contd.)

Article 59

Mr. President : Then we will take up the consideration of the articles on the Order Paper. Article 59, amendment No. 445.

The Honourable Shri K. Santhanam (Madras: General): May I suggest that we take up the articles for which amendments were circulated earlier. These amendments were given to us only this morning.

Mr. President : They were distributed to Members yesterday evening when we were sitting in the House.

Shri T. T. Krishnamachari : (Madras: General): Mr. President, Sir, the amendments to articles 59, 62, 141, 175 and 13 would mean reopening the articles already passed. May I suggest that the permission of the House be taken ?

Mr. President : Does the House give leave to reopen these articles ?

Honourable Members : Yes.

Shri T. T. Krishnamachari : Sir, I move:

“That for sub-clause (b) of clause (1) of article 59, the following sub-clause be substituted :—

‘(b) in all cases where the punishment or sentence is for an offence under any law relating to a matter to which executive power of the Union extends.’”

Sub-clause (b) of the original article 59, which relates to the powers of the President to grant pardons, reads thus :—

“(b) in all cases where the punishment or sentence is for an offence under any law relating to a matter with respect to which Parliament has, and the Legislature of the State in which the offence is committed has not, power to make laws.”

This means that the concurrent field would be left in a very nebulous position. In article 60 it is provided that in matters where Parliament so decides the executive power of the Union will extend to the States in respect of subjects falling within the concurrent field. This position will be left nebulous. Therefore the amendment seeks to remedy that defect, making the power of the President to grant pardon to extend to all matters to which the executive power of the Union extends.

There will have to be a consequential amendment in regard to article 141 where the power of pardon is given to the President, which I shall move presently if this amendment is approved by the House.

The Honourable Shri K. Santhanam : Sir, I have tabled an amendment to this. I could not send it earlier.

I move :

“That in amendment No. 445 of List XX, in the proposed sub-clause (b) of clause (1) of article 59, after the words ‘offence under any law’ the words ‘made by Parliament’ be inserted.”

I understand the purpose of amendment No. 445, but it goes much wider than its intention, because the executive power of the Union extends not only to laws made by Parliament but also to some of the laws made by the legislature of a State. For instance, in articles 234 and 234A which deal with the giving of directions, the executive power of the Union extends to some laws made by the Legislature of a State. Yesterday, in the matter of financial, emergency, we have provided that the executive power of the Union extends to matters relating to money Bills and financial matters. We do not want that in the case of offences under laws made by a State Legislature the right of pardon should accrue to the President. Therefore I want to limit it to offences under any law by Parliament. The point is when Parliament makes any law under the Concurrent List and gives executive power to the Union Executive then the power of pardon should be with

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the President. But we do not want to give the power of pardon to the President even when the executive power extends to laws made by a State legislature. Therefore I think the amendment is too wide and I want to limit it to laws made by Parliament.

I am afraid the Drafting Committee who are naturally very tired are trying to introduce amendments drafted in haste. They have had a time to scrutinise them and we have had no time either to scrutinise them.

Shri T. T. Krishnamachari : May I on a point of order say that the honourable Member is perfectly right to speak about himself. If he has had no time, we agree. But I do not think he ought to cast any aspersions on the Drafting Committee as not having had any time to scrutinise them. I would like to say that we have scrutinised every amendment. If we did not have the time to scrutinise these amendments we would not have tabled them.

Shri B. M. Gupte: (Bombay: General): Saying that they had no time is not casting any aspersions on the Drafting Committee.

The Honourable Shri K. Santhanam: I am not disputing their intension or ability, but I am saying that they are hurried which is a matter of fact.

Mr. President : Now we are at the fag end of the clauses and over four or five clauses we need not quarrel.

The Honourable Shri K. Santhanam: But some of the amendments tabled are matters of substance which, I think, will have to be debated at length. I leave it to you, Sir, but so far as this is concerned I think the words "made by Parliament" are absolutely essential to make the meaning precise and clear.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Sir, the amendment moved by my Friend Mr. Santhanam is quite unnecessary. It has been brought in by him because he has forgotten to take account of the provisions contained in article 60. Article 60 says that the executive power of the Union shall extend to all matters with respect to which Parliament has power to make laws, provided that it shall not so extend, unless the Parliament, law so provides, to matters with respect to which the Legislature of the States has also power to make laws that is, matters in the Concurrent List. Therefore, the amendment moved by my Friend Mr. Krishnamachari in sub-clause (b) of clause (1) of article 59 cannot go beyond the power of Parliament to make laws.

The Honourable Shri K. Santhanam: The article does not limit it only to those laws; it can also extend further.

The Honourable Dr. B. R. Ambedkar : No, it cannot extend further. The necessity for bringing an amendment in sub-clause (b) is this: that the executive power of the Centre extends not only to matters enumerated in List I but may also extend to matters enumerated in List III. And the position of the Drafting Committee is this, that whenever a law is made by Parliament, in respect of any matter contained in List III if the law confers executive power on the Centre, the power of the President to grant reprieve must extend to that law. Therefore, these words are necessary. Mr. Santhanam's amendment is absolutely unnecessary and out of place because article 60 covers the point.

Mr. President : The question is :

“That in amendment No. 445 of List XX, in the proposed sub-clause (b) of clause (1) of article 59, after the words ‘offence under any law ‘ the words ‘made by Parliament’ be inserted.”

The amendment was negatived.

Mr. President : The question is:

“That for sub-clause (b) of clause (1) of article 59, the following sub-clause be substituted :-

- (b) in all cases where the punishment or sentence is for an offence under any law relating to matter to which the executive power of the Union extends;’

The amendment was adopted.

Article 62

Shri T. T. Krishnamachari: Sir, I move:

“That in clause (5) of article 62, for the words ‘who from the date of his appointment is. for a period of six consecutive months, not a member’, the words ‘who for any period of six consecutive months is not a member ‘ be substituted.”

This is a purely verbal alteration in regard to the qualification, or rather the disqualification, of Ministers. If my memory is correct, I think this wording was pointed out to us as being more suitable by my honourable Friend Mr. Gupte at the time we passed this article. And I think Dr. Ambedkar had in mind examining the position. We feel this is the more appropriate wording and therefore we have suggested this amendment.

Incidentally I might mention that there is an amendment tabled by my honourable Friend Mr. Santhanam which may be quite correct, but it is only a matter of variation again of the language. Really the amendment is not a matter of substance but putting the thing in the precise form so as to avoid any mistaken interpretation that may arise in the future.

The Honourable Shri K. Santhanam: It is quite correct as my Friend Mr. Krishnamachari has said that my amendment is only to make matters clear because, as the official amendment stands, there is no clear indication where to begin the period of six months and how to count it. It may also be construed—though it may not appear a very correct interpretation—that the period may be counted even before he became a Minister, because it may be said that if a person is not a member of Parliament he cannot be appointed a Minister. Our object is that a person who is not a member of Parliament may be appointed Minister, but after that appointment he must become a member within six months and must continue to be a member afterwards. Therefore my amendment is:

“That in amendment No. 446 of List XX, in clause (5) of article 62, for the proposed words ‘who for any period of six consecutive months is not a member’ the words ‘who, after the date of his appointment, is for any period of six consecutive months not a member’, be substituted.”

When we changed from the wording of the Government of India Act 1935, I remember this was discussed by us and we put the words “from the date of appointment” as the beginning of the period. But in interpretation it may mean that afterwards he may cease to be a member after six months and such a case may not be covered. So I agree that the amendment is desirable. But if the words “after the date of appointment” are put in it will become much more precise.

Shri H. V. Kamath: (C. P. & Berar: General): May I suggest that for the word "after" which Mr. Santhanam suggests, the word "from" would be more appropriate? "After" is not correct.

The Honourable Shri K. Santhanam: "From" may mean that for the first six months he should be member and afterwards if he ceases to be member he may continue to be minister. That is the lacuna which we are trying to fill up.

Shri T. T. Krishnamachari : There is only one point I would like to mention in respect of Mr. Santhanam's amendment. His amendment is practically the same, except for a minor difference, namely, in a position where a person is a Minister who after having been elected duly and later on during four or five months after the original election some irregularity is found in the election and the election is set aside. Mr. Santhanam's amendment would not cover such a case. So I would suggest that we should err on the safe side and that the House should accept the amendment moved by me.

The Honourable Shri K. Santhanam: I do not press my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : Then I put No. 446. The question is :

"That in clause (5) of article 62, for the words 'who from the date of his appointment is, for a period of six consecutive months, not a member' the words 'who for any period of six consecutive months is not a member be substituted.'

The amendment was adopted.

Article 147

Shri T. T. Krishnamachari: I move No. 447, which reads thus:

"That in article 141, for the words 'with respect to which the Legislature of the State has power to make laws.' the words 'to which the executive power of the State extends' be substituted."

I have already explained the position while moving amendment No. 445 which the House was good enough to accept. This merely seeks to remedy the position so far as the Governor's powers of granting pardon are concerned.

Mr. President : The question is ;

"That in article 141, for the words 'with respect to which the Legislature of the State has power to make laws' the words 'to which' executive power of the State extends' be substituted."

The motion was adopted.

Article 175

Shri T. T. Krishnamachari : Sir, I move:

"That to article 175 the following proviso be added—

'Provided further that the Governor shall not assent to, but shall reserve for consideration of the President any Bill which in the opinion of the Governor would, if it law, to derogate from the powers of the High Court as to endanger the position which that court is by this Constitution designed to fill.'

The reason why we have to bring in this amendment at this stage is this. An amendment had been tabled by Dr. Ambedkar—No. 3406 of Volume II of amendments to amendments—seeking to recast the 4th Schedule, which the House has now decided to drop. and therefore Dr. Ambedkar could not move it. In that amendment. in clause (7) provision had been made in regard to the substance of the proviso which I have now moved. If the 4th Schedule had been there, this amendment would not have been necessary. At the time we considered article 175 we were not quite sure whether the 4th Schedule will be a part of the Constitution or not. That is my explanation for bringing forward this amendment.

On the merits, the House will recognise that the High Courts happen to be, so far as appointment had jurisdiction and all that is concerned, a matter exclusively of Central competence. But there are matters in which the Provinces also can interfere and this proviso is intended to protect any hasty action by a province in regard to the powers of the High Court and it directs that the Governor should reserve such Bills for the assent of the President. The matter is by itself very simple and follows a principle accepted in the body of the Constitution. I think there can be no serious objection to this amendment.

Shri H. V. Kamath: Mr. President, I would request my Friend Mr. Krishnamachari to throw some light on an obscure aspect of the matter, obscure to me. I do not follow his argument when he says that some measures or Bills might be introduced which might endanger the position. First of all, of such Bills were going to be introduced would it not be ultra vires of the legislature at its very inception, *ab initio*? Will not the introduction of the Bill be prevented by the Constitution? Then again, I have some objection to the language used in the last portion of this amendment. It is very cumbrous. It could be simplified with advantage to all concerned. Instead of saying, "as to endanger the position ... and all that, will it not be enough to say so derogate from the powers of the High Court conferred upon it by (or under) the Constitution"? That would bring out the meaning of the article clearly. I do not see any necessity for this cumbrous verbiage towards the end of the amendment.

The Honourable Dr. B. R. Ambedkar : The clause moved by my Friend Mr. Krishnamachari is of old standing. It occurs in the Instrument of Instructions, issued to the Governor of the provinces under the Government of India Act. 1935.

Paragraph 17 of the Instrument of Instructions says:

"Without prejudice to the generality of his powers as to reservation of Bills, our Governor shall not assent in our name to, but shall reserve for the consideration of our Governor-General any Bill or any of the clauses herein specified, *i.e.*

- (b) any Bill which in his opinion would, if it became law so derogate from the powers of the High Court as to endanger the position that that Court is, by the Act. designed to fulfil."

This clause is the old Instrument of Instructions the Drafting Committee had bodily copied in the Fourth Schedule which they had proposed to introduce and it will be found in Vol. II of the amendments at pages 368-369. In view of the fact that the House on my recommendation came to the conclusion that for the reasons which I then stated it was unnecessary to have any such schedule containing instructions to the Governors of the States in Part I, it is felt by the Drafting Committee that, at any rate, that particular part of the proposed Instrument of Instructions, paragraph 17, should be incorporated in the Constitution itself. Now, Sir, the reasons for doing this are these :

The High Court are placed under the Centre as well as the Provinces. So far as the Organisation and the territorial jurisdiction of the High Court are concerned, they are undoubtedly under the Centre and the Provinces have no power either to alter the organisation of the High Court or the territorial jurisdiction of the High Court. But with regard to pecuniary jurisdiction and the jurisdiction with regard to any matters that are mentioned in List II, the power rests under the new Constitution with the States. It is perfectly possible, for instance, for a State Legislature to pass a Bill to reduce the pecuniary jurisdiction of the High Court by raising the value of the suit that may be

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entertained by the High Court. That would be one way whereby the State would be in a position to diminish the authority of the High Court.

Secondly, in enacting any measure under any of the Entries contained in List II, for instance, debt cancellation or any such matter, it would be open for the Provinces to say that the decree made by any such Court or Board shall be final and conclusive, and that the High Court should have no jurisdiction in that matter at all.

It seems to me that any such Act would amount to a derogation from the authority of the High Court which this Constitution intends to confer upon it. Therefore, it is felt necessary that before such law becomes final, the President should have the opportunity to examine whether such a law should be permitted to take effect or whether such a law was so much in derogation of the authority of the High Court that the High Court merely remained a shell without any life in it.

I, therefore, submit that in view of the fact that the High Court is such an important institution intended by the Constitution to adjudicate between the Legislature and the Executive and between citizen and citizen such a power given to the President is a very necessary power to maintain an important institution which has been created by the Constitution. That is the purpose for which this amendment is being introduced.

Shri H. V. Kamath: What about my suggestion to simplify the language?

The Honorable Dr. B. R. Ambedkar: I cannot at this stage consider any drafting amendments.

Shri H. V. Kamath: All right : Do it later on.

Mr. President : I will now put it to vote.

The question is :

“That to article 175 the following proviso be added:

‘Provided further that the Governor shall not assent to, but shall reserve for the consideration of the President, any which in the opinion of the Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position which that court, is by this Constitution designed to fill.’”

The amendment was adopted.

Article 13

Mr. President : There is a previous amendment of which notice has been given—amendment No. 415.

Shri T. T. Krishnamachari : I do not propose to move it.

Sir, I move.

“That in clause (2) of article 13, after the word ‘defamation’ the word ‘contempt of court’ be inserted.”

Sir, the House will recognise that amendment No. 415 was originally tabled, as we had been advised by our legal advisers that there will be certain difficulties in regard to the exception in sub-clause (2) of article 13 in so far as the operation of sub-clause (a) of clause (1) of article 13 is concerned. But, Sir, a

number of honourable Members of this House spoke about this amendment to Members of the Drafting Committee, and they felt that it is not an amendment merely seeking to remedy a lacuna but altering the character of the clause in its entirety. They objected to two words "public order being included. The idea, at any rate, of a part of that amendment was to cover one category of what might be called lapses in the exercise of freedom of speech and expression, namely, a person might be speaking on a matter which is *subjudice* and thereby interfere with the administration of justice. That is a category of offences which is not covered by the exceptions mentioned in clause (2) of article 13, so far as the right of freedom of speech and expression is concerned. Honourable Members of this House will realize that it was not our intention to allow contempt of court to take place without any let or hindrance, and it is not our idea that sub-clause (a) of clause (1) of article 13 should be used for this purpose.

We therefore, felt, Sir, that we would restrict ourselves to merely remedying a lacuna rather than extending the scope of the exceptions mentioned in clause (2) and that is why we have decided to drop the original amendment 415 and we have tabled amendment No. 449 in which contempt of court will figure on a par with libels, slander, defamation or any matter which offends against decency or morality, or which undermines the security of, or tends to overthrow, the State. Actually, contempt of court will figure with the first three and it is a very necessary protection so far as our law courts are concerned, and I hope the House will have no objection to accepting this amendment.

Mr. President : There is an amendment by Prof. Saksena. I do not understand it. Will he explain it?

Prof. Shibban Lal Saksena: (United Provinces: General) For "contempt of court" read "or contempt of court". That has been omitted by inadvertence.

Shri T. T. Krishnamachari : 'Contempt of court or any matter': That comes later. Technically, Sir, there ought to be a comma after "defamation."

Pandit Thakur Das Bhargava (East Punjab: General) Mr. President, with your permission I propose to move my amendment No. 435 which was intended to amend No. 415, but this amendment has not been moved. My amendment seeks to substitute for the words 'any law' the words "any reasonable law. That was the old amendment in respect of amendment No. 415. Now instead of 415 Mr. T. T. Krishnamachari has moved an amendment adding the words 'contempt of court' after the word 'defamation' instead of the words "morality, public order or the administration of justice"; and when I gave the amendment it was in view of the words 'public order or the administration of justice'. All the same my amendment does not lose its value in so far as I wanted that the article 13 should be amended. The change in the amendment of Mr. Krishnamachari makes no difference to me. So with your permission I beg to move:

"That for the words 'any law' the words 'any reasonable law' be substituted."

An Honourable Member: Law is always reasonable.

Pandit Thakur Das Bhargava: The law has been defined only as a measure which is passed by the legislature. The law can be both reasonable as well as unreasonable. The law that all blue eyed persons be killed will be a good law though an unreasonable one. We are competent to pass any law which is reasonable or otherwise. We certainly pass laws through ignorance, passion, panic and prejudice which look reasonable to some and unreasonable to others. Therefore, the courts have been given the power to see whether the laws are

[Pandit Thakur Das Bhargava]

reasonable or otherwise. You have already passed under article 13 certain amendments to the original article 13 which when amended said that the courts are empowered to see whether any restrictions are reasonable or not. The legislature is competent to pass any kind of law and the courts are therefore empowered in certain matters to see that the powers exercised by the legislature are reasonable. So far as the fundamental aspect is concerned, I do not think any person shall doubt that the courts can be armed with a power like this because we have already armed the courts with these powers.

Now coming to the amendment of Mr. T. T. Krishnamachari he wants that the words "contempt of court" be added after the word "defamation" in article 13(2) and the clause would read thus :

"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, contempt of court, or any other matter which offends against decency or morality or undermines the security of or tends to overthrow the State."

In regard to this contempt of court, my contention is this, that these words need not be added to article 13, because as a matter of fact contempt of law as we understand it consists of a certain piece of conduct not necessarily with freedom of speech, because when you read the law relating to contempt of court, you will find in section 480 of the Criminal Procedure Code that usually the contempt of the ordinary courts of law consists in the infringement of sections 175, 178 and 179 and sections 180 and 288 of the Indian Penal Code. All these sections relate to certain pieces of conduct of the individual. For instance section 175 relates to non-taking of the summons from a court peon, omission to produce document; sections 178, 179 and 180 relate to the refusal to reply to question put by the Court or refusal to take an oath; and similarly section 288 applies when there is an interruption of any judicial proceedings or when there is any insult offered to the court; insult can be offered in many ways and not necessarily by way of speech.

Therefore my submission is that the essence of any of these sections is that a wrong motion or wrong conduct or attitude is penalised and not speech by itself. The courts are empowered to take cognizance of the act of contempt and there and then deal with these offences. My first contention, therefore, is that these sections 175, 178, 180 and 288 which are the subject-matter of contempt as envisaged in section 480 do not relate to the freedom of speech at all and therefore, this amendment is not germane to the subject of the freedom of speech and expression.

Moreover, Sir, we have already passed article 118 in this Constitution. It relates to the powers of the Supreme Court and in so far as the contempt of the Supreme Court is concerned, it is already covered by law and the Supreme Court is perfectly entitled to deal with cases of contempt. In regard to other courts, Sir, the law is generally contained either in the law of defamation or in Act 12 of 1926. Apart from visible contempt committed in the view of the courts as envisaged in section 480. Criminal Procedure Code. Comments of judicial acts of courts and magistrates are in the nature of technical contempt, and if you want to change the law, relating to such contempt, if you want to take away the powers of freedom of speech, you must enact that if the legislature passes any such law, it must be subject to the scrutiny of the courts.

As far 'defamation', under which such contempt usually comes it is covered by the provisions in the Penal Code. This question of defamation is a very

intricate one. In so far as civil defamation is concerned truth is absolute defence but so far as the criminal defamation is concerned the greater the truth the greater the defamation. When you arm the legislature with such plenary powers to make any law and that law is not subject to the scrutiny by the courts, it means that the legislature is given a very free hand and the freedom of speech will be reduced to a mere farce. We had lately an Act which was enacted by the previous Government in so far as they armed the courts to punish persons who made comments in respect of certain judgments. It was called the Judicial Officers' Protection Act and the provisions of that Act were very wide and sweeping. It may be that the contempt of courts may include cases of such contempt also. In regard to such contempt cases, which are technically contempt cases and which are not committed in the view of the court, there and then, they may come within the purview of the contempt law and as such should be controlled and their interpretation should be made amendable to the jurisdiction of the Court. If we do not do that, my fear is that the liberty of freedom of speech and expression will practically become a nullity.

If you kindly see the six clauses of article 13, you will find the words "reasonable restrictions". But in clause (2) there are no such words "reasonable restrictions", which means that a legislature has been given full powers to place any kind of restriction, reasonable or unreasonable. When the subject matter of clause (2) was only confined to certain matters, I could understand that the word "reasonable" might have been omitted. Even then so far as the question of "sedition" was concerned when the original article was before us we amended this law and we saw that the word "sedition" did not cover cases which it ought not to have dealt with. Therefore we changed the words thus: "which undermines the security of or tends to overthrow the States", and because these words were changed, the words, "reasonable" was not put in clause(2). Now clause (2) will not only deal with ordinary matters but the question of freedom of speech in regard to the executive authority of the courts is being introduced in it.

Therefore, since we are enlarging the scope of clause (2) it stands to reason that we may also enlarge the scope of the restriction upon the power of the legislature in so far as, if we introduce the word "reasonable" before the word 'law' then we will attain our object and we will also attain this object of restricting the scope of the legislature in defining defamation, libel, slander, etc. or any other matter which offends against decency or morality. All these matters will be rationalised to a certain extent and instead of reducing the rights and privileges of the citizens of the Republic it would be better if we enlarge their liberties, and I therefore suggest that instead of the words 'any law' the words 'any reasonable law' may be substituted. In case we do not agree to amend it further by the addition of these words, my fear is that again we will be going forward in the process which we are unfortunately after, *viz.* whatever has been given in article 13 may be taken away in some form or other. We have already done this by enacting article 24, articles 244, 278, 307 and other articles.

Therefore, my humble submission is that in regard to this, most important matter relating to freedom of speech and expression we should so arrange matters that what has been given is not taken away and whatever powers we have given to the legislature, they may be curtailed to this extent that they may be subject to the scrutiny of the courts. After all, the courts are as much the creatures of the Government as the legislature. Therefore, there is no point in having suspicion-against the authority of the courts when you yourself are, giving the legislature the power of arming the courts to hold persons guilty of contempt

[Pandit Thakur Das Bhargava]

or proceeding against them in regard to contempt of court, in executive manner. You are by the amendment giving the power to the courts to see whether the law enacted in respect of contempt of court is good or not. As a matter of fact, you are helping the courts in one way and enlarging the authority of the courts another way. Therefore, I submit that this amendment of mine should be accepted by the House.

Shri R. K. Sidhwa: Mr. President, Sir, this amendment relates to article 13 clause (1) (a). Clause (1) (a) says, All citizens shall have the right to freedom of speech and expression. Clause (2) imposes a restriction on making speeches and using any words which may be libel, slander or defamation. My honourable Friend Mr. T. T. Krishnamachari wants that the words "contempt of court" should be inserted after the word 'defamation'.

First of all, let me state that this is not a consequential amendment. This is a fundamental proposition that is being brought before this House. We know, Sir, about this contempt of court, how the Judges have been exercising their powers in the past, as if they are infallible, as if they do not commit any mistakes. Even third class magistrates, first class magistrates and sub-judges have been passing such strictures which even High Court Judges have condemned many a time. I would also like to state that the High Court Judges themselves sit as the prosecutors. They themselves want the judiciary and executive functions to be separated. In cases of contempt of court, the High Court Judge is the prosecutor and he himself sits and decides cases in which he himself has felt that contempt of court has been committed. We have many cases before us. I will quote the illustration of two cases, Mr. B. G. Horniman, the Editor of "Sentinel" and Mr. Devadas Gandhi, Editor, of the "Hindustan Times". The Allahabad High Court passed strictures against the very reasonable comments made by these two persons. They preferred to go to the jail and went to jail rather than submit to the *ex parte* decision of the High Court. I cannot understand why my lawyer friends here are very lenient to the Judges. After all, Judges have not got two horns; they are also human beings. They are, liable to commit mistakes. Why should we show so much leniency to them? We must safeguard the interest of the public. If a citizen by way of making a speech condemns the action of a third class magistrate or a fourth class magistrate who has passed strictures upon the public, is he not entitled to make a speech and comment upon it?

It is unfair that in the matter of contempt of court, this clause is to be added. I strongly resent it. It is very unfair that the citizen after having been given some rights, and having been restricted by so many clauses, you want to further restrict it by inserting "contempt of court". In contempt of court, we know when certain extraordinary things happen, High Court Judges have some sort of power. Here, you have the power right down from the magistrate up to the High Court Judges. Even there, I say the High Court Judges are not infallible: they have also committed so many mistakes. They do not want any comment to be made against a High Court Judge when comment was necessary in the interest of the public life

With these words, Sir, I feel that at this juncture the Drafting Committee may drop these words "contempt of court" which has always been a bone of contention both on the part of the newspapers and the public. I want to know in what constitution contempt of court is being inserted. My honourable Friend Mr. A. Alladi Krishnaswami Ayyar will guide whether in any constitution

in the world contempt of court is included. That power already exists with the judges. Why do you want to put that in the Constitution and make the Judge above everybody? You want to make him a Super God.

Mr. President : This has nothing to do with courts. If you read the article you will see that it says that nothing in sub-clause (a) shall effect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to contempt.

Shri R. K. Sidhwa : It relates to the citizens. The citizens shall have the right to freedom of speech and expression provided they do not make a speech which may be libel, slander, defamation or contempt of court. A judgement may have been passed by a court.....

Mr. President : A law may be passed which will prevent defamation of a private individual; but a law may not be passed which will prevent defamation or libel of a court; that is what your argument comes to.

Shri R. K. Sidhwa: I do not want any law to be made in respect of contempt of court. I am very clear on this point because in my past experience about contempt of court, from the lowest to the highest court judges have not been impartial. Therefore I am opposed to this amendment.

Mr. Naziruddin Ahmad : (West Bengal: Muslim): Mr. President, Sir, a warm controversy hangs round Contempt of Court. I submit that the High Court should have the power to punish for contempt in a summary manner. The reason is that the trial in a case must be conducted in an atmosphere of calm without any prejudice, on the evidence alone. If there is no power to proceed for Contempt of Court, any one may start a newspaper trial of a case pending in a Court or it may be that he indulges in public harangues about the merits of a case and thereby seriously prejudice the fair and impartial trial of a case. It is for this reason that Contempt of Court has found a place in our statute book. There is an act of 1926 namely the Contempt of Courts Act. There are some contempts which can be punished by even the smallest magistrates. Mr. Sidhva described him as the Fourth Class Magistrate; there is no such thing at all, If there is a man who interrupts the proceedings of a Court, he should be punished summarily by any Court. There are many other serious kinds of contempt which could be punished only by the High Court.

It is said that the High Court becomes the complainant or the prosecutor. I do not think so. Really, the dignity of the Court is impaired or its impartiality is challenged and the High Court alone should have the power to punish for contempt. To quote an example, if we show contempt to the President, the President alone should have the summarily power to deal with it. It is by way of analogy that Contempt of Court should be a part of the law. It is already a part of the law, Pandit Thakur Das Bhargava pointed out that we have already provided for Contempt of Court to be dealt with by the Courts in another place and his only objection to this amendment is whether it should find a place in clause (2) of article 13. It is very difficult on the spur of the moment to find out what is the effect of the provision we have already made. We are changing our mind so often and introducing new amendments of a scrappy character so often that it is often impossible to find out what an amendment means. It would, at the most, be, overlapping. If there is overlapping that would not be very much of a fault in this Constitution as there is plenty of overlapping in other places. I submit, therefore, that the amendment should rather be accepted.

[Mr. Naziruddin Ahmad]

With regard to Pandit Thakur Das Bhargava's amendment that the words 'any law' should be substituted by the words 'any reasonable law', it would be useless in practice. If any law is to be passed, it is to be passed by the Legislature. It has always to be assumed that the Legislature passes a law which is, or at least it considers to be, reasonable and not unreasonable. After all, a Legislature is absolutely free. The Legislature cannot contravene any constitutional limitation. But the word 'reasonable' cannot be a condition. That condition must be assumed in their very power, and the fact that elected men will make laws necessarily implies that the laws made are reasonable. But supposing we introduce this expression and make it "reasonable law", it will have no binding force on the Legislature. The word 'reasonable' would not in the least curtail their power or in the least fetter their discretion. In these circumstances, the word 'reasonable' would be absolutely unnecessary and quite meaningless in practice, and so the amendment should not be accepted; and so far as the Contempt of Court amendment is concerned, for the time being it should be accepted, subject of course to further consideration by the Drafting Committee that there is no overlapping in two places.

Shri B. Das: (Orissa: General): Sir, I seek your protection from the tyranny of the Drafting Committee. The Fundamental Rights were passed by us with great solemnity—I am not a lawyer, but being a common man I understand the Fundamental Rights given to us after great consideration in so many Committees and after serious consideration by this House. What has happened for the last two or three days that we are suffering from the tyranny of the Drafting Committee? On the 15th we received amendments to article 13 by the same two gentlemen—the Honourable Dr. Ambedkar and Mr. T. T. Krishnamachari—and today Mr. Krishnamachari has moved another amendment. Last night we got the present amendment which the House is concerned. Fundamental Rights cannot suddenly be changed. If today was not the last day of this House to consider further amendments, article 304 would have applied to any changes in the Constitution; for any changes to the Constitution it says :

“An amendment of the Constitution may be initiated by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting etc.”

When Dr. Ambedkar himself as Chairman had provided in Part XVI—Amendment of the Constitution—with such solemnity, how does the change take place overnight?

I am not one who thinks very high of the judges particularly as they are trained under the British tradition and they have misapplied justice and kept us down. I have not read in any place of public utterances that the High Court Judges or other Court Judges or Magistrates in India have changed since August 1947 and have a better realization of their function and duties. If Dr. Ambedkar, ten years hence on his retirement, writes a book on the vagaries of Courts, about contempt of court, he will see his particular partiality overnight to give certain more powers to these magistrates and judges were not called for. It will, be a very wonderful book where many penniless lawyers became judges and regulated and controlled the affairs and rule of the alien Raj by the 'contempt of court' and the chicken-hearted lawyers got frightened at them.

Mr. President : So far as High Courts are concerned, all parties and all people in this country have always held them in high esteem and it is no use casting aspersions on them generally. There may have been individual Judges who may have erred, but we should not cast aspersions on the judiciary as a whole.

Shri B. Das : Sir, I bow to your ruling. I wish my heart becomes pure and I respect the Judges in India for their eminent position and for their due discharge of their duties. However, I seek your protection. If I have my personal view, I will oppose any tempering with any articles in the Fundamental Rights, at this fag end of the session when we are dispersing and we will soon come to the Third Reading of this Constitution. We must have some sanctity over change of Fundamental Rights. If it were such a mistake, how is it that it was not spotted on the 15th of this month ? It is spotted only yesterday. Dr. Ambedkar has been described as the Manu of this century. Do Manus change overnight? In that case everyone of us will be Manu and not Dr. Ambedkar alone. I think no harm will be done if this amendment to article 13 does not take place. Let Parliament meet, let Dr. Ambedkar himself bring out a Bill and we will examine it on its merits. But why tamper with Fundamental Rights? That is my submission and I do hope, Sir, as our President, you will be pleased to give a ruling over such matters as amendments to Fundamental Rights.

Shri Krishna Chandra Sharma : (United Provinces: General): Mr. President, I am jealous for the dignity and respect of the Judges. I hold that in democracy Judges should be respected by all classes of people and there should be dignity attached to the person and their functions. But one thing I object to is that this contempt of court addition is unnecessary because the article has the words 'existing law' and there is a provision in Cr. P. C. Section 480, which deals with contempt of court during the proceedings when the Court itself has the power to punish the man committing the contempt. There is another Contempt of Court Act which empowers the High Court to take cognizance of any contempt of court anywhere. Therefore in view of the existing provisions—and I think they are sufficient to deal with the situation—no more protection is necessary. This addition is therefore unnecessary and undesirable.

The Honourable Shri K. Santhanam : Sir, I do not think the argument of the last speaker is correct because article 13 will modify the existing law. Therefore provision for contempt of court is necessary but my difficulty is that under article 13(2) every State Legislature is given the power to enact a law relating to contempt of court. If dozen legislatures enact dozen different laws relating to contempt of court, I think the position, especially of newspapers, will become very difficult.

For instance, if the Madras Legislature makes a law relating to contempt of court, it will apply, of course, according to its jurisdiction, only to the papers published in Madras. But it will not apply to all papers coming from anywhere in India and circulating in Madras, and that will happen in every province. So far as defamation, slander, etc. are concerned, they are actionable wrongs which are put in the Concurrent List. When there is any confusion, Parliament can step in and bring about uniformity. But in the case of contempt of court, I do not think it is open to Parliament to bring about uniformity. Therefore, if they want to put it in article 13 there must be a separate item in the Concurrent List so that at any time Parliament can step in and bring about some uniformity of law. Otherwise, the insertion of the words "contempt of court"

[The Honourable Shri K. Santhanam]

here, I suggest under clause (2) of article 13 will result in different laws of contempt of court and cause confusion throughout the country. I suggest that steps may be taken to at least reserve powers to Parliament either to make laws for contempt of court, or to see that laws relating to contempt of court are brought into some kind of uniformity. It may be put in the Concurrent List, if the words "contempt of court" are inserted in clause (2) of article 13.

Mr. President : Would you like to reply, Dr. Ambedkar ?

The Honourable Dr. B. R. Ambedkar : Sir, this article is to be read along with article 8.

Article 8 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, shall, to the extent of such inconsistency be void."

And all that this article says is this, that all laws, which relate to libels, slander, defamation or any other matter which offends against decency or morality or undermines the security of the State shall not be affected by article 8. That is to say, they shall continue to operate. If the words "contempt of court" were not there, then to any law relating to contempt of court article 8 would apply, a., id it would stand abrogated. It is prevent that kind of situation that the words "contempt of court" are introduced, and there is, therefore, no difficulty in this amendment being accepted.

Now with regard to the point made by my Friend Mr. Santhanam, it is quite true that so far as fundamental rights are concerned, the word "State" is used in a double sense, including the Centre as well as the Provinces. But I think he will bear in mind that notwithstanding this fact, a State may make a law as well as the Centre may make a law, some of the heads mentioned here such as libel, slander, defamation, security of State, etc., are matters placed in the Concurrent List so that if there was any very great variation among the Laws made, relating to these subjects , it will be open to the Centre to enter upon the field and introduce such uniformity as the Centre thinks it necessary for this purpose.

The Honourable Shri K. Santhanam: But contempt of court is not included in the Concurrent List or any other list.

The Honourable Dr. B. R. Ambedkar : Well, that may be brought in.

Mr. President : Then I will put these two amendments to vote. As a matter of fact, Pandit Thakur Das Bhargava's amendment is not an amendment to Mr. Krishnamachari's amendment, it is independent altogether. I will put them separately. First I Put Mr. Krishnamachari's amendment to vote.

The question is:

"That in clause (2) of article 13, after the word 'defamation' the words 'contempt of court', be inserted."

The amendment was adopted.

Mr. President : Then I will put the amendment of Pandit Thakur Das Bhargava.
The question is:

“That at the end of the amendment No. 415 of list XVIII (second Week), the following be added :
‘That for the words ‘any law’ the words ‘any reasonable law’ be substituted.’ ”

The amendment was negatived.

Mr. President : Then we take up the new article 302AAA, i.e., amendment No. 450. Mr. Santhanam has made a suggestion that in order to complete the amendment which has just been passed, “Contempt of Court” must be included in the Concurrent List, and I think it is consequential and we had better take that thing.

The Honourable Dr. B. R. Ambedkar : I will move an amendment straightaway, Sir, I move::

“That after entry 15 in the concurrent List, the following entry be added: ‘
‘15A. contempt of court.’ ”

Mr. President : I do not think there can be any objection to that.

Mr. Naziruddin Ahmad : There may be many more such things.

Mr. President : May be, but they will come up in time.

So, I will put this to vote.

The question is

“That after entry 15 in the Concurrent list, the following entry be added:—
‘15A, Contempt of Court.’ ”

The amendment was adopted.

Entry 15A was added to the Concurrent List.

New Article 302AAA

Mr. President : Then we take up amendment No. 450.

Shri T. T. Krishnamachari : Sir, I beg to move:

“That after article 302AA, the following new article be inserted:-

‘302AAA. (1) Notwithstanding anything contained in this Constitution, the President may by public Special provisions as to major ports notification direct that as from such date as may be specified in the and aerodromes, notification:-

- (a) any law made by Parliament or by the Legislature of a State shall not apply to any major port or aerodrome or shall apply thereto subject to such exceptions or modifications as may be specified in the notification, or
- (b) any existing law shall cease to have effect in any major port or aerodrome except as respects things done or omitted to be done before the said date, or shall in its application to such port or aerodrome have effect subject to such exceptions or modifications as may be specified in the notification.

(2) In this article :-

- (a) ‘major port’ means a port declared to be a major port by or under any law made by Parliament or any existing law and includes all areas for the time being included within the limits of such port;
- (b) ‘aerodrome’ means aerodrome as defined for the purposes of the enactments relating to airways, aircraft and air navigation.’ ”

[Shri T.T. Krishnamachari]

Sir, the reason for moving this article is that certain difficulties have been experienced in regard to what are called international aerodromes, in trying to fit in transit passengers—internationals—who come in there, but who may not ordinarily for the time being, come within the scope of the particular laws of the province in which the aerodrome is situated. The idea, I understand, is that Santa Cruz Aerodrome in Bombay and Dum Dum in Calcutta, are now to be treated as international aerodromes. It is possible that other aerodromes will also be treated as coming under the same category, before long. For instance, if there is absolute prohibition law in regard to liquor in any province, the moment the passenger lands and if he has some liquor with him, he would be coming within the scope of this law of the province, whereas it is, only proper that he should come within the scope of the law of the State only when he goes out of the aerodrome into the area covered by the State. Again, there are certain specified security regulations that may be necessary in the aerodromes, but which may not fit in with the scheme of security regulation current in the State. For instance, in military aerodromes the security regulations are very strict because the entire aerodrome is under military control. In the case of civil aerodromes the position is a little different. The Central Government which controls them will have to depend largely on local laws so far as security arrangements and other similar matters are concerned and it may be necessary, not merely to have a preventive staff whom the Central Government is empowered to have by fiscal legislation but also have a special police with special powers for the purpose of dealing with international traffic and those who interfere with it.

The same contingency will apply to major ports also, particularly to new ports that come into being in areas which were formerly called Indian States. There are some difficulties experienced in the case of such ports already and there may be more difficulties in future. This is merely enabling provisions to permit the President the limited power to get over the difficulties that might arise which would not necessitate the provinces to alter their laws to suit the special circumstances of a port or aerodrome. It will help the provinces to make a law irrespective of the fact that there is a major port or aerodrome situated in the State and it helps the Centre to control those areas if it desires to do so by passing laws in addition to those existing in the provinces or modifying those laws to suit the special circumstances of the case. Instances might be quoted against the utility of an article of this nature but their validity is limited. There are possibilities of more instances of a different nature arising in the future. I repeat that this is an enabling provision which does not seek to interfere with the powers of the provinces at all. Major ports and aerodromes are admittedly under Central control for an purposes and the Centre is also empowered to have additional legislative control by means of Presidential action.

The purpose of the amendment is simple one and I am told which is very necessary in regard to the administration of the aerodromes and major ports concerned with international traffic. I hope the House will accept it.

Mr. Naziruddin Ahmad: Will there be no changes necessary in the Seventh Schedule ?

Shri T. T. Krishnamachari : No. Major ports and aerodromes are Central subjects.

Mr. President : Prof. Shibbanlal Saksena has given notice of an amendment. He is not in his place and therefore it is not moved.

Shri R. K. Sidhwa: Sir, I cannot understand how this article is described as a simple one and merely a consequential change is sought to be made.

Mr. President : It was not stated that it is a consequential change.

Shri R. K. Sidhwa: The Mover said that it is a simple article concerned with international traffic and should be approved by the House.

Sir, the preamble does not state why the President should be empowered with extraordinary powers and over rule any law which Parliament may make regarding aerodromes and major ports. These come within the Union List, I do not see why clause (a) provides "any law made by Parliament or by the Legislature of a State". I do not think any State is empowered to make laws regarding aerodromes and major ports.

Sir, if this article is meant for emergencies such as war and so on. I can understand it. During the last two World Wars, entry to the aerodromes and major ports was prohibited to the public and many restrictions were imposed regarding traffic therein. I can understand that. But I cannot understand why when Parliament in the ordinary course make laws, such laws should be superseded by the President. What are the reasons for empowering the President to do so ? No case has been made out for this. Today, in the international airports if any passenger comes from foreign countries he is subjected to search. His luggage and even his person are searched. There are both men and women inspectors at the Custom House for this purpose. All these restrictions are there now and so I do not think there is any need to give the President this power. As I said, I can understand the need for this power in an emergency. But, why, when laws enacted by Parliament are there for the purpose ordinarily, should the President have power to overrule those laws? In emergencies the position will be different, I agree, I have personal experience of it. Even relatives of persons embarking or disembarking at ports are not allowed access. Such restrictions are there and have been there in times of emergencies. I do not see any necessity for vesting this power in the President. Instead of this, however, I would suggest the following provision :- "Notwithstanding anything contained in this Constitution, the President may by public notification direct as from such date as may be specified any law may be made in the event of an emergency or war." If these lines are added this article would get a different meaning and may be necessary. Otherwise it will mean you want to deprive Parliament of the power of making laws. I want an explanation as to why the words "Legislature of State" are put in. Has any State power to make laws concerning aerodromes ?

The Honourable Dr. B. R. Ambedkar : Sir, I think my Friend Mr. Sidhva has entirely misunderstood the position. If he will refer to List 11, in Schedule Seven, items 30 and 35 which relate to the matters covered by the amendment moved by my Friend Shri T. T. Krishnamachari, he will see that the power of legislation given to the Centre under items 30 and 35 is of a very limited character. The power given under item 30 is for the purpose of regulation and organisation of air traffic. The power given under 35 is for the purpose delimitation of the Constitution and the powers of port authorities. He will very readily see that, so far as the territory covered by aerodromes or air ports and ports is concerned it is part of the territory of the province and consequently

[The Honourable Dr. B. R. Ambedkar]

any law made by the State is applicable to the area covered by the aerodrome or the port. These entries 30 and 35 do not give the Centre power to legislate for all matters which lie within the purview of the Central Government under the entries. The powers are limited. Therefore the proposal in this article is this that while it retains the areas covered by the aerodromes and by the ports as part of the area of the provinces—it does not exclude them—it retains the power of the States to make laws under any of the items contained in List II so as to be applicable to the areas covered by the aerodromes and the areas covered by the ports. What the amendment says is that if the Central Government think that for any particular reason such as for instance sanitation, quarantine, etc., a law is made by the State within whose jurisdiction a particular aerodrome or port is located, then it will be open for the President to say that this particular law of the State shall apply to the aerodrome or to the port subject to this, that or the other notification. Beyond that, there is no invasion on the part of the Centre over the dominion of the States in respect of framing laws relating to entries contained in List II so far as aerodromes and ports are concerned. I hope my Friend, Mr. Sidhva, will now withdraw his objection.

Mr. President : I shall now put amendment No. 450 to the vote. The question is :

“That after article 302AA. the following new article be inserted:

‘302AAA. (1) Notwithstanding anything contained in this Constitution, the President may by public notification direct that as from such date as may be specified in the notification—

Special provisions as to major ports and aerodromes

- (a) any law made by Parliament or by the Legislature of a State shall not apply to any major port or aerodrome or shall apply thereto subject to such exceptions or modifications as may be specified in the notification, or
- (b) any existing law shall cease to have effect in any major port or aerodrome except as respects things done or omitted to be done before the said date, or shall in its application to such port or aerodrome have effect subject to such exceptions or modifications as may be specified in the notification.

(2) In this article

- (a) ‘major port’ means a port declared to be a major port by or under any law made by Parliament or any existing law and includes all areas for the time being included within the limits of such port;
- (b) ‘aerodrome’ means aerodrome as defined for the purposes of the enactments relating to airways, aircraft and air navigation.’ ”

The motion was adopted.

Article 302AAA was added to the Constitution.

Mr. President : Then we go to the next item, article 306A.

Shri T. T. Krishnamachari : May I suggest that we pass over the next item for the time being and take up Schedule III-A ?

Mr. President : Yes we may take that up.

Schedule III-A

Shri T. T. Krishnamachari : Mr. President, Sir, I move:

That after Schedule III, the following Schedule be inserted:

‘SCHEDULE III-A

[ARTICLES 4(1) & 67(1a)]

ALLOCATION OF SEATS IN THE COUNCIL OF STATES

To each State or States specified in the first column of the table of seats appended to Schedule there shall be allotted the number of seats specified in the second column of the said table opposite to that state or States, as the case may be.

TABLE OF SEATS**THE COUNCIL OF STATES****REPRESENTATIVES OF STATES FOR THE TIME BEING SPECIFIED IN PART I OF THE FIRST SCHEDULE**

States	Total Seats
1	2
1. Assam	6
2. Bengali	14
3. Bihar	21
4. Bombay.. .. .	17
5. Koshal-Vidarbh	12
6. Madras	27
7. Orissa	9
8. Punjab	8
9. United Provinces	30
TOTAL	144

REPRESENTATIVES OF STATES FOR THE TIME BEING SPECIFIED IN PART II OF THE FIRST SCHEDULE

States and Groups of States	Total Seats
1	2
1. Ajmer }	1
2. Coorg }	1
3. Bhopal	1
4. Bilaspur.. }	1
5. Himachal Pradesh }	1
6. Cooch-Bihar	1
7. Delhi	1
8. Kutch	1
9. Manipur }	1
10. Tripura }	1
11. Rampur	1
TOTAL	8

[Shri T. T. Krishnamachari]

REPRESENTATIVES OF STATES FOR THE TIME BEING SPECIFIED
IN PART III OF THE FIRST SCHEDULE

States	Total Seats
1	2
1. Hyderabad	11
2. Jammu & Kashmir	4
3. Madhya Bharat	6
4. Mysore	6
5. Patiala & East Punjab States Union	3
6. Rajasthan.. .. .	9
7. Saurashtra	4
8. Travancore-Cochin	6
9. Vindhya Pradesh	4
TOTAL	53
TOTAL OF ALL SEATS	205

Sir, these are three tables, one relating to the States specified In Part I, the second relates to States specified in Part II and the third relates to States specified in Part III, and the total number of seats allotted happens to be 205. I would explain, Sir, that the relative article in the Constitution happens to be 67, clauses (1), (2), (3) and (4) , and, as honourable Members will realise, that under clause (1) the maximum has been fixed at 250, out of which twelve members, shall be nominated by the President and the rest will be representatives of the States. The basis of the scheme envisaged in these tables is the decision of the Union Constitution Committee at a meeting held on the 1st December 1948 at which the following Members of this House were present:

The Honourable Shri Jawaharlal Nehru.

The Honourable Shri Jagjivan Ram.

The Honourable Dr. B. R. Ambedkar

Shri K. M. Munshi. Prof. K. T. Shah.

Shri T. T. Krishnamachari, and

Mr. B. H. Zaidi

If I may be permitted, I will read the relevant portion of the Committee's report.

“The Committee did not go into the details of the revised scheme of a location of seats in the Council of States prepared by office, as owing to mergers of various types the position of the Indian States is still unsettled. They were of the view that it was advisable to postpone consideration of the detailed allocation of seats to a later date. The Committee while reiterating their previous decision that the representation of units in the Council of States shall be on the scale of one representative for every million of the population up to five millions of the population plus one representative for every additional two millions of the population there-after, considered it unnecessary to adhere to the other decision that the maximum number of representatives from anyone unit shall be limited to twenty five. It was found that only two States, namely Madras and United Provinces would be affected by the imposition of such a limitation and that an abrogation of this limit while securing uniformity would involve only an increase by seven seats in the total number of seats which would be well within the overall maximum of 250 members provided for in article 67(1) of the Draft Constitution”

Sir, it is on the basis of this report made by the Union Constitution Committee that one seat should be allotted to every million up to five millions and thereafter one seat for every additional two millions, that this total has been worked out, and, as honourable Members will see, the total number comes to 205 plus twelve to be nominated by the President, *i.e.* 217. We still have thirty-three seats in hand before reaching the maximum number mentioned in article 67(1).

I would like to say why this is necessary because we could have adopted a different scheme even though it may be in contravention of the recommendations of the Union Constitution Committee. It may be, as honourable Members of the House will understand, that there is a further splitting up of the Units in Part I. If that will be the case, the number will naturally be increased because by every splitting up of the Units, the commitments will increase by at least five. These reallocations by reason of action taken by future Governments under article 3 of this Constitution may necessitate the raising of this number 217 to a still higher figure, and therefore provision has been made by following the system indicated by the Union Constitution Committee's report, *viz.* one seat for every millions up to five million and one seat for every additional two millions thereafter, which, I think, is a very fair arrangement and will allow freedom of action so far as the future is concerned. I would not claim any infallibility so far as these, figures are concerned. May be that the thing might be arranged in some other manner. For instance, regrouping in regard to States in Part II may be taken exception to. It is a matter of opinion.

I think on the whole the scheme is fair, but should honourable Members of this House or people outside have any objection, of course those objections will be examined and those objections will be placed before you and if you will permit me, the necessary amendments will be moved at a later stage, but I do not think that in the face of the arrangement placed before the House any serious alteration would become necessary between now and the Third Reading stage.

I would like to mention another factor that by reason of making this amendment, I would also have to make three consequential amendments, because of certain variations that have occurred. For one thing, article 67(1a) refers to Schedule III-B. An amendment will be necessary in regard to this particular sub-clause in the article. An amendment would also be necessary in article 4 because while taking into consideration article 4 we had omitted to mention along with the First Schedule the Schedule relating to the Table of Seats in the Council of States. Article 4 reads thus :

“Any law referred to in article 2 or article 3 of this Constitution shall contain such provisions for the amendment of the First Schedule as may be necessary to give effect to the provisions of the law and may also contain such incidental and consequential provisions as Parliament may deem necessary.”

Any alteration of the First Schedule will entail the alteration of Schedule III. The First Schedule and the Third Schedule have got to be taken together. I will move an amendment later for putting in Schedule III-A in article 4. These amendments will be moved subsequently if the amendment that I have now moved for the incorporation of Schedule III-A containing the Tables of Seats in the Council of States is accepted by the House.

Shri H. V. Kamath: I do not know why my esteemed friend once again referred to my honourable Colleagues as “pepeople inside the House”.

Mr. President : He said "honourable Members and people outside".

The question is :

"That after Schedule III, the following schedule be inserted

SCHEDULE III-A

[ARTICLES 4(1) & 67(1a)]

ALLOCATION OF SEATS IN THE COUNCIL OF STATES

To each State or States specified in the first column of the table of states appended to this Schedule there shall be allotted the number of states specified in the second column of the said table opposite to that State or States, as the case may be.

TABLE OF SEATS

THE COUNCIL OF STATES

REPRESENTATIVES OF STATES FOR THE TIME BEING SPECIFIED IN PART I OF THE FIRST SCHEDULE

States 1	Total Seats 2
1. Assam	6
2. Bengal	14
3. Bihar	21
4. Bombay	17
5. Koshal-Vidarbh	12
6. Madras	27
7. Orissa	9
8. Punjab	8
9. United Provinces	30
TOTAL	144

REPRESENTATIVES OF STATES FOR THE TIME BEING SPECIFIED IN PART II OF THE FIRST SCHEDULE

1. Ajmer }	1
2. Coorg }	1
3. Bhopal ..	1
4. Bilaspur .. }	1
5. Himachal Pradesh }	1
6. Cooch-Bihar ..	1
7. Delhi ..	1
8. Kutch ..	1
9. Manipur }	1
10. Tripura }	1
11. Rampur ..	1
TOTAL	8

REPRESENTATIVES OF STATES FOR THE TIME BEING SPECIFIED IN PART III OF THE FIRST SCHEDULE

1. Hyderabad	11
2. Jammu & Kashmir	4
3. Madhya Bharat	6
4. Mysore	6
5. Patiala & East Punjab States Union	3
6. Rajasthan	9
7. Saurashtra	4
8. Travancore-Cochin	6
9. Vindhya Pradesh	4
TOTAL	53
TOTAL OF ALL STATES	205."

The motion was adopted.
Schedule III-A was added to the Constitution.

Shri T. T. Krishnamachari : Mr. President, Sir, I move:

“That in clause (1a) of article 67, for the word, figure and letter ‘Schedule III-B the word, figure and letter ‘Schedule III-A’ be substituted.”

I have already explained the need for this amendment. I hope the House will accept the amendment.

Mr. President : This is merely consequential. The question is:

“That in clause (1a) of article 67, for the word, figure and letter ‘Schedule III-B’ the word, figure and letter ‘Schedule III-A’ be substituted.”

The amendment was adopted.

Shri T. T. Krishnamachari : Sir, I move :

“That in clause (1) of article 4, after the words ‘First Schedule’ the words, figure and letter ‘and Schedule III-A’ be inserted.”

I have also explained the need for this amendment. I hope the House will accept the amendment.

Mr. President : This is also consequential. The question is:

“That in clause (1) of article 4, after the words ‘First Schedule’ the words figure and letter ‘and Schedule III-A’ be inserted.”

The amendment was adopted.

Shri T. T. Krishnamachari: Mr. President, I move:

“That in clause (1) of article, 4, for the words ‘incidental and consequential provisions’ the words and brackets ‘supplemental, incidental and consequential provisions (including provisions as to representation in Parliament and in the Legislature or Legislatures of the State’ or States to be affected by such law)’ be substituted.”

This is a modification of the words which we now seek to supplant. There is nothing intrinsic in this amendment which seeks to vary a principle which has been incorporated in article 4.

Mr. Naziruddin Ahmad: Does it enlarge the scope of the original text?

Shri T. T. Krishnamachari : Only to the extent that article 4 is an operative clause, in regard to article 3, and the enlargement is restricted only to the extent that is absolutely necessary.

Mr. President : The question is:

“That in clause (1) of article 4, for the words ‘incidental and consequential provisions the words and brackets ‘supplemental, incidental and consequential provisions (including provisions as to representation in Parliament and in the Legislature or Legislatures of the State or States to be affected by such law)’ be substituted.”

The amendment was adopted.

PART XVIII

Shri T. T. Krishnamachari : Mr. President, Sir, I move:

“That for Part XVIII the following Part be substituted:

PART XVIII

SHORT TITLE, COMMENCEMENT AND REPEALS

Short title.

313A. This Constitution may be called the Constitution of India.”

Shri B. Das: You have to say “of India, that is Bharat”.

Shri T. T. Krishnamachari : We have used the word India as we have used it in other places in the Constitution.”

314. This article and articles 5, 5A, 5AA, 5B, 303, 311, 331 A and 312F of this Constitution shall come into force at once, and the remaining provisions thereof shall come into force on the twenty sixth day of January, 1950, which date is referred to in this Constitution as the date of commencement of this Constitution.

Commencement.

315. The Indian Independence Act, 1947, in so far as its provisions are repugnant to this Constitution and the Government of India Act, 1935, including the India (Central Government and Legislature) Act, 1946 and, all other enactments amending or supplementing the Government of India Act, 1935, shall cease to have effect :

Repeal.

Provided that nothing in this article shall affect the provisions of the Abolition of Privy Council Jurisdiction Act, 1949.”

Sir, the first clause 313A is a formal one. The second clause relates to clause 314 which in the draft Constitution has been left more or less blank after the words “This Constitution shall come into force on..... This clause puts in articles 5, 5A, 5AA and 5B relating to Citizenship, article 303 (Definitions) and articles 311, 311A and 312F which are transitory provisions. 311 relates to the election of the provisional Parliament, 311A to the provisional President, and 312F relates to the provisional Parliament so as to determine the method to be followed for the by- elections and the rules to be followed for that purpose. These have been put in as the articles will have to come into force immediately. The remaining articles will come into force on the appointed day, which is the 26th of January 1950.

So far as 315 is concerned, this more or less follows the scheme in the draft Constitution with this exception that we have found it necessary to provide that the operation of the Privy Council Jurisdiction Act passed by this House shall not be affected by this repeal. I do not think there is any need to explain the purport of these articles as they are self-explanatory.

The Honourable Shri K. Santhanam : What about the appointment of a Commission for the delimitation of constituencies ?

Shri T. T. Krishnamachari : That we have not put in, I would like to add this. There may be, for instance, the question of delimitation of constituencies under article 290. This must be preceded by a legislation by the provisional Parliament. I do not think anything could be done in that regard between now and the 26th of January, 1950. I will mention here another matter, if I may do so with your permission. These are the articles that to us now appear as being necessary to be. put in article 314. The position will be examined at greater length. Actually I understand the Law Ministry attached to the Government of India is going through the whole matter and is carefully scanning the provisions of the Constitution that will have to come into force before the appointed date. Should we feel that anything should be added to these articles we shall seek your permission and the permission of the House to incorporate them at a later stage. At the moment these are the only articles affected as far as we can see by going through the articles and scrutinising the meaning of those articles. But other consequential matters might arise, and if they should arise on a scrutiny and examination of the articles by us we shall certainly bring fresh proposals before the House with your permission.

Mr. President : There are certain amendments relating to the original article, I shall take them up if the Members want them, and if they fit in with the amendment as now put in. There are three here. One is by Dr. Deshmukh He is

not here; so it is not moved. The next one is by Mr. Brajeshwar Prasad. He too is not here. So it is also not moved. Then there is again an amendment relating to 315 by Dr. Deshmukh. So it is not also moved. Are there any others ?

Shri H. V. Kamath: I have certain amendments in Vol. II of the printed list.

Mr. President : You may move them, but I think we may take these from the beginning. First 314. There are certain amendments. One is by Mr. N. Ahmad regarding numbering of the Chapter. It is verbal and need not be moved. Mr. Prakasam is not here. Mr. Lari is no longer a member. There is no other amendment to 314. To 315 there is one by Mr. Kamath-3325. He may move it.

Shri H. V. Kamath: Mr. President, I refer to amendments 3325 and 3327 of Printed List, Vol. II. I do not propose to move 3325 because the article as now moved by my honourable Friend Mr. Krishnamachari has made an alteration in 314 regarding the date on which the Constitution will come into force. My amendment which refers to the date of commencement of the Constitution has therefore no validity now. Amendment 3327 is a verbal or formal one. The House will see that the marginal heading of article 315 is "Repeals" and in conformity with that, I thought it would be more correct to state at the end of this article instead of the words "shall cease to have effect"—"shall stand repealed". Of course, I am not a lawyer or an authority on matters of constitutional terminology and phraseology. I shall be content with leaving this matter to the collective wisdom of the Drafting Committee.

But, Sir, I would like to make a few observations in regard to the amendment just now moved by my honourable Friend Mr. Krishnamachari, No. 463. The first point is with regard to article 315 as moved by him. This refers to the Indian Independence Act, 1947. If the House will compare this with the original draft of this article, they will see that the words "insofar as its provisions are repugnant to this Constitution" are a fresh insertion. The original draft was silent on this point. I would like to know what exactly is the significance of these words. Do we not state categorically, clearly and unambiguously that with effect from the date of commencement of this Constitution the Indian Independence Act stands repealed, and of course the Government of India Act and what not? When this Constitution comes into force, then all other laws that were in force till that date automatically become null and void. Therefore, these words "insofar as its provisions are repugnant to this Constitution"—are wholly unnecessary and should be deleted. I am sorry I had no time to give notice of an amendment.

As regards article 314, it refers to the date of commencement of this Constitution. Certain articles have got—and quite rightly so,—to come into force at once. I have nothing to say on that point. But about the second part of this article which says that the rest of the Constitution shall come into force on the 26th January 1950. I made a suggestion some time ago that, granting, with all my heart that the 26th of January has got a sanctity all its own in our national calendar, we might still have another day, and it might very aptly and in the fitness of things signify, the advent of our complete freedom and republican status. We may christen it the "Republic Day" The 26th January would still be regarded as "Independence Day", the day on which we took the famous pledge of independence, But in all humility I suggest that we might have a—"Republic Day" which we may observe like other days in our national calendar. I have no objection if the "Independence Day" and the "Republic Day"

[Shri H. V. Kamath]

synchronise, but I think it would add more importance to our national calendar if we had "Independence Day" on the 26th January and another day in January or December as "Republic Day". As a matter of fact, if it were possible, we might have December 9th, 1949, as the Republic Day, because we began this historic Assembly on the 9th December. But perhaps it is not quite possible to get all these things ready by then, so I would suggest a day in January and have it as "Republic Day" to be celebrated like "Independence Day" or "Gandhi Jayanti" or other national days. I would request the House to, consider this little submission of mine to the effect that we might as we state that the remaining provisions of this article shall come into force on the midnight of the 25/26th January 1950. Just as in August 1947 we celebrated or we welcomed the advent of freedom on the night of 14/15th August 1947, it would be in the fitness of things if we state here definitely that the remaining provisions thereof shall come into force on the midnight of 25/26th January 1950, and if that were adopted today, it would have the way for the celebration of another historic ceremony.

I do not know what the astrologers will have to say about this matter, because last time when they were consulted, there was a conflict of opinion about the auspiciousness of the date.

Mr. President : They offered their opinion without being consulted.

Shri H. V. Kamath: They were consulted by friends outside and they were not quite agreed whether it was wholly auspicious. I do not think we are always bound by the opinions of astrologers, but other things being equal, we might as well celebrate it on the midnight of 25/26th January 1950.

I hope Mr. T. T. Krishnamachari has been listening to me and that he will try his best to answer the suggestions that I have made.

Mr. Naziruddin Ahmad: I am not moving my amendment, but with regard to the amendment that has been moved by Mr. T. T. Krishnamachari, I have some difficulty about the proposed article 315. Article 315 tries to state that the Indian Independence Act, insofar as it is repugnant to this Constitution, shall cease to have effect. I however think that this should be covered by the old article 307. I do not know what has become of it: whether it is proposed to move it or not. But article 307 in the Draft Constitution.....

Shri T. T. Krishnamachari : Another article 307 has been moved and accepted and is part of the Constitution.

Mr. Naziruddin Ahmad: This article 307 would cover 315. I am referring to the old article, and I suppose that the new article 307 is substantially of the same effect.

Shri T. T. Krishnamachari: Except clause (2)

Mr. Naziruddin Ahmad: Clause (1) says: "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 continue in force therein until....."

So, "all laws in force in the territory of India" would also include the Indian Independence Act 1947.

Shri T. T. Krishnamachari : It is expressly mentioned.

Mr. Naziruddin Ahmad: It is not necessary: otherwise you should mention all the other existing Acts which would be covered. The Indian Independence Act is completely in the hands of the Indian Legislature. That Act states that from the appointed date, all laws relating to the Indian administration and all British laws applicable to India, should no longer be affected or modified or dealt with in any way by the British Parliament but this should be dealt with specifically by the Indian Legislature. If that is so, I fail to see how the Indian Independence Act is an Act which requires a special mention. That is certainly within our competence. The British Parliament has no longer any jurisdiction over that. They have enacted a self-denying ordinance and that is certainly a law in force in the territory of India. Those laws which are now existing will have to be adopted under article 307. I do not know how far the office has proceeded with it, because on the 26th January we expect a complete Adaptation Order, fully ready, to be applicable on that date. On and from that date all laws, inconsistent with the present Constitution should be clearly adapted to suit the Constitution.

I think the word "Repeal" in the marginal note is inapplicable because we are not repealing the Independence Act: we are merely trying to say that insofar as it is inconsistent with the present Constitution it shall cease to have effect. We really modify the Act or adapt it to suit the present Constitution and that purpose would certainly be served by article 307. I therefore oppose article 315. All that we want is not the repeal but really an adaptation.

With regard to article 314, there is one expression which is coming up before the House repeatedly, namely, "the date of the commencement of this Constitution". Sometimes we say, "the commencement of the Constitution". On other occasions we say "the date of the commencement of this Constitution". I think the words 'the date of', are absolutely unnecessary and tautological. We mention here the "26th day of January 1950", which date is referred to in this, article as the "date of the commencement of this Constitution. The 26th day of January 1950 is certainly a "date", and if that is referred to as the commencement of this Constitution the words 'date or are absolute unnecessary. The use of this expression has been rather indiscriminate in many places that they occur and in many places they do not occur. I should think these words should be deleted by the Drafting Committee so as to make the expression absolutely neat and clear and yet complete.

I would like to know what progress has been made in the adaptation of the of the existing laws because this is extremely important and things should be ready on the 26th January. This will affect courts, offices and various other persons. We should have a completely adapted series of Acts, as was done in the case of the Government of India Act, all the Acts were adapted and an Adaptation Order was printed and circulated before time so as to be ready on the date that the Constitution came into effect, that is, on the 1st April 1937.

I should like to know what progress has been made already, because if that is not taken in hand, there may be an impasse and confusion. So this requires clarification and if we have taken that in hand, then article 315 will be absolutely unnecessary.

The Honourable Shri K. Santhanam: Sir, I have just two points to make with reference to amendment No. 463. I think before any other article is brought into Operation, it is desirable to have at least the Preamble and article I also to be brought into operation because all the other clauses refer to India and so before article I comes into operation, I do not think it is quite right that

[The Honourable Shri K. Santhanam]

other articles should be brought into operation. I suggest that the Preamble and article I also may be added. These articles should be brought into immediate operation while the rest may come into operation on the 26th of January.

Mr. Naziruddin Ahmad: The difficulty would be that the Preamble has not yet been accepted by the House.

The Honourable Shri K. Santhanam: It will have to be accepted before the Constitution is complete. I am only suggesting this.

Shri R. K. Sidhwa: May I know why you want the Preamble to be made applicable immediately ?

The Honourable Shri K. Santhanam: Preliminary to bringing the whole Constitution into force, we are bringing some provisions of the Constitution into force and the object of the Constitution and the name of the country must be there before any part of the Constitution can be brought into force. You may consider that suggestion for what it is worth.

In proposed article 315 there are provisions what are hardly consistent with the dignity of the new Constitution. It says: "The Indian Independence Act, 1947, insofar as its provisions are repugnant to this Constitution and the Government of India Act, 1935, including the India (Central Government and Legislature) Act, 1946, and all other enactment amending or supplementing the Government of India Act, 1935, shall cease to have effect." The Independence Act to the extent it is not repugnant to the provisions will continue in existence and be in force. I think the entire Independence Act must be repealed. The only fundamental law must be the Constitution. The validity of all other laws must be derived from the Constitution. When the Government of India Act, 1935 was passed, all the previous Acts were completely repealed. I do not think we should leave the Indian Independence Act as if it is continued together with the Constitution as a fundamental law of the country so that it can be argued in the Supreme Court that a certain provision of the Indian Independence Act, because it is not repugnant to the provisions of the Constitution will continue in force. Our Supreme Court should not derive any authority from the Indian Independence Act; it should derive its authority only from the Constitution. I think this is an elementary principle which is necessary for the dignity of the whole Constitution. We should not say that our Constitution consists of the Constitutions which we have enacted and the Indian Independence Act to the extent it is not repugnant to the provisions of the Constitution. So I think this is a matter of importance and I suggest that Mr. Alladi and others should put their heads together and see that we do not enact a clause which is likely to be detrimental to the dignity of the Constitution we are making.

Shri B. Das: Mr. President, Sir, in article 314 it says: "This article 311 will come into force at once." When the article 311 was passed I understood that those members of provincial legislatures that are Members of this House WM continue till the 26th of January, 1950. I wish it should be made clear that all members of provincial legislatures, that our comrades and colleagues here will remain with us until the 26th of January 1950 when the Republic will be declared. I hope no mistake will be made on that quarter if we accept the present article 314 (Interruption). I respectfully request you to examine article 311 and I want to know whether our colleagues here from the provincial legislatures will continue to remain with us till the 26th January, 1950 when the Republic will be declared. Otherwise if that is not Contemplated, I oppose inclusion of article 311 here.

Shri R. K. Sidhwa: It is clear.

Shri Alladi Krishnaswami Ayyar (Madras: General): Mr. President, I just want to say a word or two in regard to the first objection of my Honourable Friend Mr. Santhanam. I might point out that in the Draft Constitution, article 315, there is no reference to the retention of any revision of the Dominion Act after our Constitution comes into force. I would read the language of the said original article. "The Indian Independence Act, 1947 and the Government of India Act, 1935, including the India (Central Government and Legislature) Act, 1946 and all other enactments amending or supplementing the Government of India Act, 1935, shall cease to have effect." On a careful consideration I am inclined to agree with Mr. Santhanam, namely, that there is no question of the retention of any of the provisions of the earlier Act after our new Constitution comes into force. No doubt we might give a fresh lease of life to certain laws which were passed under the old Constitution and adopt them, so to speak, as the law under our Constitution. That is necessary and that provision has been made. I might also point out we were particularly anxious that the Constitution which we are making or passing must not be traceable to section 7 of the Independence Act and we took the view that there is no necessity of even the Governor General's assent being required for the new Constitution. The new Constitution will not be a constitution passed under or in pursuance of the wide and comprehensive powers given under section 7 or 8 of the Indian Independence Act. Therefore, when once we pass a Constitution, use our own free will, independent of and without reference to any earlier Act, there is no need of mentioning that the Independence Act will continue to be in force to any extent whatever. I might mention that even when an Act like the Government of India Act of 1935 was passed it was in pursuance of an Act of Parliament and the earlier Government of India Act was treated as repealed, excepting in so far as the provisions of the earlier Government of India Act were in terms adopted and continued by particular sections of the Government of India Act. Under those circumstances there is force in the suggestion of Mr. Santhanam, but they are in the nature of a drafting amendment. If permission is given that might be dropped at a later stage. The reason why I am mentioning this is that having emerged from the Drafting Committee, it is only fair that it should be amended again by the Drafting Committee. There will be no difficulty whatever in regard to that point.

Then some technical point was raised by my honourable Friend, Mr. Kamath, with regard to the words 'cease to have effect'; for the very reason for which he has been fighting we advisedly put in the express words "cease to have effect". On the point as to repeal, we are to remember we are an independent body. The Independence Act emanated from another Parliament. There is no question of our repealing another Act. That is why advisedly the draft Constitution contained the express provision "cease to have effect." Therefore, consistent with the ideas of my honourable Friend Mr. Kamath, who always stands for the independence of this country, for the Constitution not having reference to anything emanating from the British Parliament, it is appropriate and fitting that the expression 'cease' should be there instead of the word 'repealed'.

Then, Sir, lastly the point mentioned by Mr. Santhanam : one, regarding the coming into force of the Preamble and secondly, that India shall be a Union. I think, if I may say with respect to my honourable Friend who is always careful about his points, there is no force in that objection. So far as the Preamble is concerned, though in an ordinary statute we do not attach any importance to the Preamble, all importance has to be attached to the Preamble in a Constitutional statute, there is no such thing as the Preamble immediately coming

[Shri Alladi Krishnaswami Ayyar]

into force. The Preamble will come into force in all its plentitude when the Constitution comes into force. There is no reason to say that the Preamble will come into force earlier than when the Constitution comes into force.

Secondly, I do not think we can bring into force the article that India shall be a Union because India does not immediately become a Union of States as it is understood throughout the Constitution. A Union must be understood with the entire constitutional mechanism that has been created under the Constitution which we are passing. We cannot conceive of a body or soul without limbs. If the limbs do not begin to operate how can a Union come into existence. So far as that point is concerned, even Homer nods and there is no force in the objection raised by Mr. Santhanam that the article must come into force immediately.

Mr. President : There was one point raised by Mr. Das with regard to article 311.

Shri T. T. Krishnamachari : That is very clear, Sir,

Shri Alladi Krishnaswami Ayyar: I have not caught the point.

Shri Kuladhar Chaliha (Assam: General): Sir, I want to understand from the Drafting Committee how you can reconcile article 311(3) with article 314 article 314 says that it shall come into force at once. These Member, will have to vacate immediately I think. I want to have an answer from Mr. Krishnamachari. If that is the consequence, we cannot support this.

The Honourable Shri K. Santhanam: This will come into effect when the Third Reading is passed.

Mr. President : That is exactly the point raised by Mr. B. Das also.

Shri T. T. Krishnamachari : Sir, in regard to the point raised by Mr. B. Das and Mr. Kuladhar Chaliha, I would like to say this. Article 311(3) says:

“If a member of the Constituent Assembly of the Dominion of India was on the sixth day of October 1949, or thereafter becomes at any time before the commencement of this Constitution a member of a House of the legislature of a Governor’s province then, as from the date of commencement of this Constitution the seat of such member shall unless he has ceased to be a member of that Assembly earlier, become vacant.”

Here, article 314 says that the date of the commencement of the Constitution is 26th of January 1950. Even though these articles are to come into force immediately, the date of the commencement of the Constitution will be the operating factor. I do not think there is any doubt about that. I can tell honourable Members this. The idea is that Members who have double member-ship remain Members until the 25th of January. (Interruption). Honourable Members will please bear me patiently. We will have to examine the position again ,if instead of the words ‘date of commencement of the Constitution’ the words ‘appointed date’ would suit better. Because, the appointed day happens to be the 26th of January. The position will be examined by Dr. Ambedkar and the Drafting Committee and if it is felt that the position of the Members will in any way be prejudicially affected, I will give this assurance to this House, that we will try to safeguard it by a suitable amendment and I think honourable Members need have no fear in that matter.

Dr. B. Pattabhi Sitaramayya (Madras : General): I should like to know what was the object with which this was included. The date of commencement of the Constitution being evident and the tenure continuing till that date, what

was the object of including this article mentioning the articles which are immediately coming into force? Probably it is to bring the elections into operation. If so, can you have an implied purpose and a declared purpose which are different from each other. This must be re-examined.

Shri T. T. Krishnamachari : The honourable Doctor has really put his finger on the point. The point is that, notwithstanding the fact that the vacancies have not occurred until the 25th of January, elections will have to be held so that the new Members will be enabled to take their seats on the 26th of January, on which date the vacancies will definitely occur. The idea is to enable the President of the Constituent Assembly to hold these elections notwithstanding the fact the actual vacancies will occur later. The wording of article 311 is clear. Both articles 311 and 312F permit the President of the Constituent Assembly to make appropriate rules for the purpose of enabling elections to be held on the supposition that the seats will become vacant on the 25th of January. The position as the Doctor has understood is correct and the position is also perfectly clear. I do not think any Member will be prejudicially affected by the fact that these articles are being brought into effect immediately from the time the Constitution is finally passed, or the Third Reading has been passed. If we do not do it, the President of the Constituent Assembly will not be empowered to take any action under articles 311 and 312 F.

With regard to the wording of article 315, I must bow to the superior wisdom of my honourable Colleague Mr. Alladi Krishnaswami Ayyar. If he now feels that the wording is not as it should be, I suppose the matter has definitely to be reconsidered. I would only say this, When experts differ, the layman is literally at sea. The reason why we made this change in the draft article is because of the advice that has been given to us by the Constitutional Adviser of this honourable House which is in these terms. "—This article provides without any qualification that the Indian Independence Act, 1947 and certain other Parliamentary enactments shall cease to have effect. There are, however, certain provisions of the Indian Independence Act which would not cease to have effect. For example, there is no reason why the provision of that Act stating that His Majesty's Government in the United Kingdom have no longer any responsibility as respects the government of any of the territories which immediately before August 1947 were included in British India, that the suzerainty of His Majesty over the Indian States lapses, etc., should not continue to remain in force. There is nothing in this provision that is repugnant to the new Constitution. Hence the proposed amendment." My honourable Friend Mr. Alladi Krishnaswami Ayyar holds the view that as this Constitution is completely independent in character, it acts on its own volition and therefore all the other enactments that preceded it must automatically cease to have effect. I quite agree. But, this is the opinion that was given to us by the Constitutional Adviser and it is only on the lines of this opinion that we put in these words "in so far as its provisions are repugnant to this Constitution.

I had originally thought of suggesting that we might, in order to make the meaning of this particular article clear, split it up into two and call it 315 (1) with the following words: "The Indian Independence Act, 1947, in so far as its provisions are repugnant to this Constitution". Then put the figure (2) and put the following words after it. "The Government of India Act, 1935 including the India (Central Government and Legislature) Act, 1946, and all other enactments amending or supplementing the Government of India Act". And thereafter, put these words below, which shall apply to both (1) and (2): shall cease to have effect". In view of the position taken up by my honourable Friend Mr. Alladi Krishnaswami Ayyar, I would suggest with your permission, that the House do pass this article in this form and we will have the position re-examined.

[Shri T. T. Krishnamachari]

My honourable Colleague, the Chairman of the Drafting Committee is not here. We shall have the position re-examined and if necessary, at the Third Reading Stage, when we are convinced that these words "in so far as its provisions are repugnant to this Constitution" should be eliminated, we shall eliminate them at the Third Reading Stage.

I therefore suggest that we shall pass this article in the present form and if any change is necessary, we shall take adequate legal advice and the eminent lawyer members of the Drafting Committee will examine it. We will 'put my honourable colleague Mr. Alladi Krishnaswami Ayyar against Dr. Ambedkar and Mr. Munshi and we will probably be able to arrive at a settlement so far as the wording is concerned. I do hope that....

The Honourable Shri K. Santhanam: Would it not be better that the opposite course is adopted?

Shri T. T. Krishnamachari : I have suggested one course. My honourable Friend Mr. Santhanam takes the opposite view. It is for the House to decide whether my view is proper or the opposite view. I would also suggest that before we finalise the wording of the article, we shall have the benefit of the views of Sir B. N. Rau about this matter. We shall immediately write to him about this matter and ask him if he would revise his view in the light of the expression of opposite views in the House. Therefore, I suggest that this article be accepted by the House in its present form, subject to this condition that the whole thing will be re-examined and if on examination we find that the objections mentioned by my honourable Friend Mr. Santhanam and supported by my honourable Colleague have any validity, the article will come before the House in a revised form.

So far as the objection to the wording "cease to have effect" is concerned, which my honourable Friend Mr. Kamath wants to be supplanted by the word "repealed", I think my honourable Colleague Mr. Alladi Krishnaswami Ayyar has answered him adequately. The House need, therefore, have no qualms in accepting the wording 'cease to have effect.'

Shri H. V. Kamath: What about the two suggestions that I made in regard to a separate Republic day and also about the Midnight ceremony ?

Shri T. T. Krishnamachari : That is a matter for the appropriate authorities and not for the Drafting Committee.

Mr. Naziruddin Ahmed: Is it proper to accept this subject to reconsideration? If these controversial matters are left over for the Third Reading, other matters will have no time. I suggest it should be dropped. It is included in 307.

Mr. President : That again is a controversial matter. In some form it has to be passed today so that the Second Reading may be completed. If any question arises for revision, that may be done at the Third Reading stage, and as Mr. Krishnamachari said they will have the matter re-examined and if we find that any amendment is necessary, we shall take that up at that stage. If we leave it also, then we could not bring anything new at that stage.

The Honourable Shri K. Santhanam: If the words 'In so far as its provisions are repugnant to this Constitution, are omitted, it will have unanimous acceptance and there is nothing to prevent them in re-introducing those words if they

are found essential. Now we are asked to take it in a form which we dislike and it is said that they will consider it later. There is no difficulty for the Drafting Committee to re-introduce the words if it is considered essential.

Mr. President : It is really a matter for the House to decide. I will put the two views separately.

The question is:

That for Part XVIII, the following Part be substituted:

PART XVIII

SHORT TITLE, COMMENCEMENT AND REPEALS

'313. This Constitution may be called the Constitution of India'.

The amendment was adopted.

Mr. President : The question is:

"This article and articles 5, 5A, 5AA, 5B, 303, 311, 311A and 312F of this Constitution shall come into force at once, and the remaining provisions thereof shall come into force on the twenty-sixth day of January, 1950, which date is referred to in this Constitution as the date of commencement of this Constitution."

The amendment was adopted

Article 315

Mr. President : The question is:

"That in proposed article 315 the words 'in so far as its provisions are repugnant to this Constitution' be deleted."

The amendment was adopted.

Mr. President : Of course it is understood that it is subject to re-examination.

The Honourable Shri K. Santhanam : Yes, It is appreciated.

Shri H. V. Kamath: I leave my amendment in the printed list to the wisdom of the Drafting Committee. That need not be put to vote.

Mr. President : The question is :

"That proposed article 315, as amended, stand part of the Constitution".

The motion was adopted.

Article 315, as amended, was added to the Constitution.

Article 306A

Mr. President : We go to 306A.

It is suggested that we had better begin the Preamble. It may be moved.

Shri T. T. Krishnamachari : It is not necessary to move it. The Preamble may be taken into consideration.

Mr. President : The Preamble is moved. I shall have to take up the various amendments to the Preamble now. I have a large number of amendments—many of them printed in the printed list.

Maulana Hasrat Mohani (United Provinces: Muslim): I understand that you have already decided that the Preamble will be taken up last. How is it that there are some articles remaining undiscussed and you pass to the Preamble?

Mr. President : Not many articles left.

Maulana Hasrat Mohani: Even one article—unless you finish the articles, you cannot take up the Preamble.

Mr. President : Very well, let us take up 306A.

The Honourable Shri Satyanarayan Sinha (Bihar: General): Sir, are you taking up the Preamble?

Mr. President : No, Maulana Hasrat Mohani objects to the Preamble being taken up before all the other articles are finished.

There is one more article of which notice was given and it has been standing over, amendment No. 472 by Mr. Naziruddin Ahmad. And I understand it is the same as another article of which notice was given by Pandit Thakur Das Bhargava.

Pandit Thakur Das Bhargava: Sir, it was held over on the 3rd June, by your order.

Mr. President : Then shall we take it up now? Which of them shall we take up. Mr. Naziruddin Ahmad's or that of Pandit Thakur Das Bhargava?

Pandit Thakur Das Bhargava: Sir, I beg to move that.....

Shri R. K. Sidhwa: Sir, there are other articles also of which notice has been given by other Members.

Mr. President : There is no other amendment by the Drafting Committee.

Shri R. K. Sidhwa: But there may be other Members who may have amendments besides these two.

Mr. President : Amendments for the addition of new articles?

Shri R. K. Sidhwa: Yes.

Mr. President : I do not think they will arise now.

Pandit Thakur Das Bhargava: Sir, I understand Shri Gopaldaswami Ayyangar has just come and so I may be allowed to move, after he has done.

Mr. President : There are so many articles of which notice was given and which are dropped now. We have dealt with the whole Constitution from every point of view and we cannot begin now taking up new articles. I know Pandit Thakur Das Bhargava's amendment was held over, but it has been covered by other amendments.

Pandit Thakur Das Bhargava: It is not covered, Sir.

Mr. President : Very well. We take up article 306A now. Mr. Gopaldaswami Ayyangar.

The Honourable Shri N. Gopaldaswami Ayyangar (Madras : General): Sir, before I read out the motion. I would request your permission, Sir, not to move item 379, but to move item 451 instead.

Sir, I move:

“That with reference to Amendment No. 379 of List XV (Second Week), after article 306, the following new article be inserted:

‘306A. (1) Notwithstanding anything contained in this Constitution,

- (a) the provisions of article 211A of this Constitution shall not apply in relation to the State of Jammu and Kashmir;
- (b) the power of Parliament to make laws for the State shall be limited to
 - (i) those matters in the Union List and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for the State; and

- (ii) such other matters in the said List as, with the concurrence of the Government of the state, the president may by order specify;

Explanation.—For the purposes of this article, the Government of the State the person for the time being recognised by the Union as the Maharaja of Jammu and Kashmir, acting on the advice of the Council of Ministers.”

I am making, Sir, with your permission, a change here. Instead of the word “appointed” I am substituting the words, “for the time being in office”—“under the Maharaja’s Proclamation, dated the fifth day of March, 1948.”

Pandit Hirday Nath Kunzru: We could not hear the honourable Member, correctly.

The Honourable Shri N. Gopaldaswami Ayyangar:

Explanation.—For the purposes of this article, the Government of the State means the person for the time being recognised by the Union as the Maharaja of Jammu and Kashmir, acting on the advice of the Council of Ministers, for the time being in office, under the Maharaja’s Proclamation, dated the fifth day of March, 1948.”

I have there substituted the words “for the time being in office,” for the word appointed”.

“(c) the provisions of article 1 of this Constitution shall apply in relation to the state.

- (d) such of the other provisions of this Constitution and subject to such exceptions and modifications shall apply in relation to the State as the President may by order specify:

Provided that no such order which relates to the matters specified in the Instrument of Accession of the State aforesaid shall be issued except in consultation with the Government of the State:

Provided further that no such order which relates to matters other than those referred to in the last preceding proviso shall be issued except with the concurrence of that Government.

- (2) If the concurrence of the Government of the State referred to in sub-clause (b) (ii) or in the second proviso to sub-clause (d) of clause (1) was given before the Constituent Assembly for the purpose of framing the Constitution of the State is convened, it shall be placed before such Assembly for such decision as it may take thereon.
- (3) Notwithstanding anything in the preceding clauses of this article, the President may, by public notification, declare that this article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify:

Provided that the recommendation of the Constituent Assembly of the state shall be necessary before the President issues such a notification.”

Sir, this matter, the matter of this particular motion, relates to the Jammu and Kashmir State. The House is fully aware of the fact that that State has acceded to the Dominion of India. The history of this accession is also well known. The accession took place on the 26th October, 1947. Since then, the State has had a chequered history. Conditions are not yet normal in the State. The meaning of this accession is that at present that State is a unit of a federal State namely, the Dominion of India. This Dominion is getting transformed into a Republic, which will be inaugurated on the 26th January, 1950. The Jammu and Kashmir State, therefore, has to become a unit of the new Republic of India.

As the House is aware, accession to the Dominion always took place by means of an instrument which had to be signed by the Ruler of the State and which had to be accepted by the Governor-General of India. That has taken place in this case. As the House is also aware, Instruments of Accession will be

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a thing of the past in the new Constitution. The States have been integrated with the Federal Republic in such a manner that they do not have to accede or execute a document of Accession for the purpose of becoming units of the Republic, but they are mentioned in the Constitution itself; and, in the case of practically all States other than the State of Jammu and Kashmir, their constitutions also have been embodied in the Constitution for the whole of India. All those other States have agreed to integrate themselves in that way and accept the Constitution provided.

Maulana Hasrat Mohani: Why this discrimination, please?

The Honourable Shri N. Gopaldaswami Ayyangar: The discrimination is due to the special conditions of Kashmir. That particular State is not yet ripe for this kind of integration. It is the hope of everybody here that in due course even Jammu and Kashmir will become ripe for the same sort of integration as has taken place in the case of other States. (*Cheers*) At present it is not possible to achieve that integration. There are various reasons why this is not possible now. I shall refer again to this a little later.

In the case of the other Indian States or Unions of States there are two or three points which have got to be remembered. They have all accepted the Constitution framed for States in Part I of the new Constitution and those provisions have been adapted so as to suit conditions of Indian States and Unions of States. Secondly, the Centre, that is the Republican Federal Centre will have power to make laws applying in every such State or Union to all Union and Concurrent Subjects. Thirdly a uniformity of relationship has been established between those States and Unions and the Centre. Kashmir's conditions are, as I have said, special and require special treatment.

I do not want to take much of the time of the House, but I shall briefly indicate what the special conditions are. In the first place, there has been a war going on within the limits of Jammu and Kashmir State.

There was a cease-fire agreed to at the beginning of this year and that cease-fire is still on. But the conditions in the State are still unusual and abnormal. They have not settled down. It is therefore necessary that the administration of the State should be geared to these unusual conditions until, normal life is restored as in the case of the other States.

Part of the State is still in the hands of rebels and enemies.

We are entangled with the United Nations in regard to Jammu and Kashmir and it is not possible to say now when we shall be free from this entanglement. That can take place only when the Kashmir problem is satisfactorily settled.

Again, the Government of India have committed themselves to the people of Kashmir in certain respects. They have committed themselves to the position that an opportunity would be given to the people of the State to decide for themselves whether they will remain with the Republic or wish to go out of it. We are also committed to ascertaining this will of the people by means of a plebiscite provided that peaceful and normal conditions are restored and the impartiality of the plebiscite could be guaranteed. We have also agreed that the will of the people, through the instrument of a constituent assembly, will determine the constitution of the State as well as the sphere of Union jurisdiction over the State.

At present, the legislature which was known as the Praja Sabha in the State is dead. Neither that legislature nor a constituent assembly can be convoked or can function until complete peace comes to prevail in that State. We have therefore to deal with the Government of the State which, as represented in its Council of Ministers, reflects the opinion of the largest political party in the State. Till a constituent assembly comes into being, only an interim arrangement is possible and not an arrangement which could at once be brought into line with the arrangement that exists in the case of the other States.

Now, if you remember the view points that I have mentioned, it is an inevitable conclusion that, at the present moment, we could establish only an interim system. Article 306A is an attempt to establish such a system.

I shall now proceed to take the House through the provisions of this article. As honourable Members will remember, the constitution of Indian States is mainly governed by article 211A of this Constitution which applies the Constitution to Indian States, subject to the modifications contained in Part VI-A read with the Schedule. So far as that provision is concerned, I have already indicated to you that the provisions regarding the Constitution of other States could not at present be applied to Jammu and Kashmir. Therefore, clause (1) (a) of this article says that the provisions of article 211A of this Constitution shall not apply to the State of Jammu and Kashmir.

The Second portion of this article relates to the legislative authority of Parliament over the Jammu and Kashmir State. This is governed primarily by the Instrument of Accession. Broadly speaking, that legislative power is confined to the three subjects of defence, foreign affairs and communications, but as a matter of fact these broad categories include a number of items which are listed in the Instrument of Accession. I believe they number some twenty to twenty-five. Now, these items have undergone a change in description, in numbering, in arrangement, as amongst themselves, in List I and List III of the new Constitution. It is therefore necessary that the items mentioned in the Instrument of Accession should be brought into line with the changed designations of entries in Lists I and III of the new Constitution. So, clause (1) (b) of article 306A says that this listing of the items as per the terms of the new Constitution should be done by the President in consultation with the Government of the State.

Clause (b)(ii) refers to possible additions to the List in the Instrument of Accession, and these additions could be made according to the provisions of this article with the concurrence of the Government of the State. The idea is that even before the Constituent Assembly meets, it may be necessary in the interests of both the Centre and the State that certain items which are not included in the Instrument of Accession would be appropriately added to the List in that Instrument so that administration, legislation and executive action might be furthered, and as this may happen before the Constituent Assembly meets, the only authority from whom we can get consent for the addition is the Government of the State. That is provided for.

Then, there is the Explanation, which defines what the Government of the State means. The Government of the State is defined both in the Constitution which is now supposed to be in force in the Jammu and Kashmir State as well as in the Proclamation which the Maharaja issued on the 5th March 1948. The terms

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of the Proclamation, to the extent that they are inconsistent with the provisions of the Constitution Act of the State, will prevail over that Constitution Act, and therefore it is that in this Explanation it is the Proclamation which is referred to. Under the terms of that Proclamation the Maharaja constituted an interim popular Government, and he said,

“I hereby ordain as follows:—

- (1) My Council of Ministers shall consist of the Prime Minister and such other Ministers as may be appointed on the advice of the Prime Minister. I have by Royal Warrant appointed Sheikh Mohd. Abdullah as the Prime Minister with effect from the 1st day of March 1948.”

He proceeds—

“The Prime Minister and other Ministers would function as a Cabinet and act on the principle of joint responsibility.”

Then there was no Legislature functioning, and so he instituted a kind of responsible Government with a Prime Minister and colleagues who would own collective responsibility for their acts and regard themselves as jointly responsible for all the acts of the Government. Now, that is brought out in this Explanation.

The Honourable Shri K. Santhanam: The Explanation says that the Maharaja will be recognised by the Union instead of by the President.

The Honourable Shri N. Gopaldaswami Ayyangar: Perhaps we may leave it to the Third Reading. As you know the scheme of the Constitution Act is that the Rajpramukh must be recognised by the President. So, this also says that the Maharaja of Jammu and Kashmir should be a person recognised for the time being by the Union.

As regards the Council of Ministers, this Proclamation set up a system under which this Council was to be established, *viz.*, that the Maharaja first finds the Prime Minister and then on his advice appoints his colleagues, and the Explanation as now amended by me says that whatever Council of Ministers is in being at the time will, along with the Maharaja to whom they are responsible, give their concurrence or give their advice on such matters as are referred to them under this article.

Clauses (c) and (d) refer to the provisions of the Constitution other than the matters listed in Lists I and III. These various provisions have been divided into certain categories. The first according to this draft is that article 1 of the Constitution will automatically apply. As you know, it describes the territory of India and includes amongst these territories all the States mentioned in Part III, and Jammu and Kashmir is one of the States mentioned in Part III. With regard to the other provisions in the Constitution, these will apply to the Jammu and Kashmir State with such exceptions and modifications as may be decided on when the President issues an Order to that effect. That Order can be issued in regard to subjects mentioned in the Instrument of Accession only after consultation with the Government of the State. In regard to other matters, the concurrence, of that Government has to be taken.

Now, it is not the case, nor is it the intention of the members of the Kashmir Government whom I took the opportunity of consulting before this draft was finalised—it is not their intention that the other provisions of the Constitution are not to apply. That particular point of view is that these provisions should apply only in cases where they can suitably apply and only subject to such

modifications or exceptions as the particular conditions of the Jammu and Kashmir State may require. I wish to say no more about that particular point at the present moment.

Then we come to clause (2). You will remember that several of these clauses provide for the concurrence of the Government of Jammu and Kashmir State. Now, these relate particularly to matters which are not mentioned in the Instrument of Accession, and it is one of our commitments to the people and Government of Kashmir that no such additions should be made except with the consent of the Constituent Assembly which may be called in the State for the purpose of framing its Constitution. In other words, what we are committed to is that these additions are matters for the determination of the Constituent Assembly of the State.

Now, you will recall that in some of the clauses of this article we have provided for the concurrence of the Government of the State. The Government of the State feel that in view of the commitments already entered into between the State and the Centre, they cannot be regarded as final authorities for the giving of this concurrence, though they are prepared to give it in the interim periods but if they do give this concurrence, this clause provides that that concurrence should be placed before the Constituent Assembly when it meets and the Constituent Assembly may take whatever decisions it likes on those matters.

The last clause refers to what may happen later on. We have said article 211A will not apply to the Jammu and Kashmir State. But that cannot be a permanent feature of the Constitution of the State, and hope it will not be. So the provision is made that when the Constituent Assembly of the State has met and taken its decision both on the Constitution for the State and on the range of federal jurisdiction over the State, the President may on the recommendation of that Constituent Assembly issue an order that this article 306A shall either cease to be operative, or shall be operative only subject to such exceptions and modifications as may be specified by him. But before he issues any order of that kind the recommendation of the Constituent Assembly will be a condition precedent. That explains the whole of this article.

The effect of this article is that the Jammu and Kashmir State which is now a part of India will continue to be a part of India, will be a unit of the future Federal Republic of India and the Union Legislature will get jurisdiction to enact laws on matters specified either in the Instrument of Accession or by later addition with the concurrence of the Government of the State. And steps have to be taken for the purpose of convening a Constituent Assembly in due course which will go into the matters I have already referred to. When it has come to a decision on the different matters it will make a recommendation to the President who will either abrogate article 306A or direct that it shall apply with such modifications and exceptions as the Constituent Assembly may recommend. That, Sir, is briefly a description of the effect of this article, and I hope the House will carry it.

(Amendments Nos. 459, 460 and 461 were not moved.)

Shri Mahavir Tyagi: (United Provinces: General) I am not in concurrence with the wording of the clauses, but I do not wish to move the amendments.

(Amendment No. 462 was, not moved.)

Mr. President : There is one more amendment of which notice was received this morning. That is by Shri Mahavir Tyagi to the effect "that in amendment No. 451 of List XX (Second Week), in the proviso to clause (3) of the proposed new article 306A" for the word "recommendation" the word "consultation" be substituted.

Shri Mahavir Tyagi: I am not moving that too.

Mr. President : The article is now open to discussion.

Maulana Hasrat Mohani: Sir, I want to make it clear at the very outset that I am neither opposed to all these concessions being granted to my Friend Sheikh Abdullah, nor am I opposed to the acceptance of the Maharaja as the ruler of Kashmir. And if the Maharaja of Kashmir gets further powers and concessions I will be very glad. But what I object to is this. Why do you make this discrimination about this Ruler? Mr. Ayyangar has himself admitted here that the administration of Kashmir State is not on a very good basis.....

The Honourable Shri N. Gopalaswami Ayyangar: That is a wrong statement. I never said so.

Maulana Hasrat Mohani : That it will assume independence afterwards. But may I ask a question? When you make all these concessions for Kashmir I most strongly object to your arbitrary act of compelling the Baroda State to be merged in Bombay. The administration of Baroda State is better than the administration of many other Indian Provinces. It is scandalous that you should compel the Maharaja of Baroda to have his raj merged in Bombay and himself pensioned off. Some people say that he himself voluntarily accepted this merger. I know it is an open secret that he was brought from England and compelled against his will.....

Mr. President : Maulana, we are not concerned with the Maharaja of Baroda here.

Maulana Hasrat Mohani: Well, I would not go into any detail. But I say that I object to this sort of thing. If you grant these concessions to the Maharaja of Kashmir you should also withdraw your decision about the merger of Baroda into Bombay and allow all these concessions and many more concessions to the Baroda ruler also.

Mr. President : The question is:

“That with reference to Amendment No. 379 of List XV (Second Week), after article 306. the following new article be inserted:-

‘306A. (1) Notwithstanding anything contained in this Constitution:

- (a) the provisions of article 211A of this Constitution shall not apply in relation to the State of Jammu and Kashmir.
- (b) the power of Parliament to make laws for the State shall be limited to
 - (i) those matters in the Union List and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India are the matters with respect to which the Dominion Legislature may make laws for the State; and
 - (ii) such other matters in the said Lists as, with the concurrence of the Government of the State, the President may by order specify;

Explanation.—For the purposes of this article, the Government of the State means the person for the time being recognised by the Union as the Maharaja of Jammu and Kashmir, acting on the advice of the Council of Ministers for the time being in office, under the Maharaja’s Proclamation, dated fifth day of March, 1948.

- (c) the provisions of article I of this Constitution shall apply in relation to the State;

- (d) such of the other provisions of this Constitution and subject to such exceptions and modifications shall apply in relation to the State as the President may by order specify:

Provided that no such order which relates to the matters specified in the Instrument of Accession of the State aforesaid shall be issued except in consultation with the Government of the State:

Provided further that no such order which relates to matters other than those referred to in the last preceding proviso shall be issued except with the concurrence of that Government.

- (2) If the concurrence of the Government of the State referred to in sub-clause (b) (ii) or in the second proviso to sub-clause (d) of clause (1) was given before the Constituent Assembly for the purpose of framing the Constitution of the State is convened, it shall be placed before such Assembly for such decision as it may take thereon.

- (3) Notwithstanding anything in the preceding clauses of this article, the President may, by public notification declare that this article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify:

Provided that the recommendation of the Constituent Assembly of the State shall be necessary before the President Issues such a notification’.”

The motion was adopted.

Article 306A was added to the Constitution.

Mr. President: These are all the amendments that we have had from the Drafting Committee. There are certain amendments printed in the List of Amendments and probably some others in some one or other of the numerous lists subsequently circulated. The question is whether we take up any of those amendments. We have gone through the whole Constitution article by article and clause by clause at great length and I do not think we can reopen any of those things at this stage by bringing in fresh amendments. There is one amendment by Pandit Thakur Das Bhargava, No. 472, on which Mr. Naziruddin Ahmad has given notice of an amendment, and this was included in List I of Fifth Week. It was not by itself an amendment. It was a long article and it related only to one paragraph of that article. I think this very point has been covered by article 109 which we have passed. Article 109 confers original jurisdiction on the Supreme Court and Article 121 lays down that the Supreme Court will have its own rules of procedure, while article 25 deals with the remedies given to a party to have Fundamental Rights enforced in court. I think these three articles between themselves cover everything contained in the amendments of Mr. Naziruddin Ahmad and Pandit Bhargava. I therefore rule out of Pandit Bhargava's amendment.

We shall now take up the Preamble.

Preamble

An Honourable Member: May I suggest that the Preamble be taken up when we meet again in November for the Third Reading? By that time, the Drafting Committee will also have submitted its final report to this House.

Maulana Hasrat Mohani: I object to that, because unless you get the Preamble passed today, how could you produce any report on the Second Reading?

Shri K. M. Munshi: Once in my life I support the Maulana Saheb!

Mr. President : I think we should get the Preamble also passed today. The Constitution as a whole has to be passed in its Second Reading and the Preamble forms part of the Constitution. Therefore, the Preamble cannot be postponed.

[Mr. President]

If necessary, we shall sit in the afternoon and dispose of it, unless we can do it within fifteen minutes that remain before one o'clock.

I find there are quite a good number of amendments to the Preamble in Vol. I of the Printed List. Many of them bring in certain matters really not germane to the Preamble but by way of introduction of the Preamble. But I find that Maulana Hasrat Mohani's amendment is one of substance and seeks to bring in altogether new ideas. Therefore, I would ask him if he wishes to move his amendment first.

Maulana Hasrat Mohani: I have three amendments. I want to move them separately, not in one bundle.

Mr. President : Which one do you want to move first?

Maulana Hasrat Mohani: I wish to move 453 first. It runs thus:

“That for amendment No. 8 of the List of Amendments (Volume 1), the following be substituted:—

“That in the Preamble, for the words “We, the People of India, having solemnly resolved to constitute India into a Sovereign Democratic Republic” the following be substituted:—

“We, the People of India having solemnly resolved to constitute India into a Sovereign Federal Republic.”

or alternatively

“We, the people of India, having solemnly resolved to constitute India into a Sovereign Independent Republic”.

I shall just now give my reasons for proposing these amendments. In view of the proverbial shortness of public memory, I want first to remind the Members about a very fundamental fact that has been brought into the present Constitution and in the Draft prepared by Dr. Ambedkar. I refer to Volume IV No. 6 of the official report of the proceedings of this Assembly—list 738, Part I: Federal territory and jurisdiction. Under “name of territory and federation” it is said that the Federation hereby established shall be a sovereign independent republic known as India. So it is clearly laid down that we will have only a Federation and it will be a federation of Indian republics. But my friend, Dr. Ambedkar has cleverly, I suppose, dropped the word “federal” altogether and the word “independent” also has been dropped and he has said “democratic State”. I objected to that when I spoke the other day.

Shri Deshbandhu Gupta: (Delhi): On a point of order: the effect of these amendments if passed would be that the whole Constitution will have to be recast.

Maulana Hasrat Mohani: Who will be responsible for that?

Shri Deshbandhu Gupta: To move such an amendment at this stage is out of order and it should therefore be disallowed.

Maulana Hasrat Mohani: I should submit that I tried my best in the very beginning to stop you. I said that when you are going to decide the fate of India you should first make up your mind to find out and declare what kind of constitution you are going to frame. But I was ruled out. Of course I said if you do not accept my suggestion then you should not grumble, when the Preamble is presented; should I not raise any objection? Then I will not listen to you if you say because we have passed such and such a things

Shri Deshbandhu Gupta : May I have your ruling?

Maulana Hasrat Mohani : I say that you are responsible for preventing me from getting this thing discussed in the very beginning and therefore if you have to redraft the whole Constitution it does not matter. I shall insist on it. I have every right to propose any amendment in the Preamble, and if you find you have already passed something quite different, let me tell you that the Preamble will not be subject to your erroneous decisions and you will have to correct those decisions and it may take a year or two. But it does not matter. But unless and until you conform to the accepted principles prevalent all over the world, I think it will be ridiculous to pass this so perfunctorily.

Shri Deshbandhu Gupta : May I draw the attention of the Chair to the point of order moved by me? I am serious about it.

Mr. President : He is moving amendment No. 453 which runs thus:

“That in the Preamble for the words

‘We, the People of India, having solemnly solved to constitute India into a Sovereign Democratic Republic’ the following be substituted:—

We, the People of India, having solemnly resolved to constitute India into a Sovereign Federal Republic.’”

Or

‘We, the people of India having solemnly resolved to constitute India into a Sovereign Independent Republic.’”

So far as this amendment is concerned, I do not see anything in it that is out of order.

You are taking only this one, Maulana Sahib?

Maulana Hasrat Mohani: No, no. I will propose the other one when the time comes.

Mr. President : At present you are moving this one?

Maulana Hasrat Mohani: Yes. But I am not giving up the other amendment.

Mr. President : You are not taking up any other at the present moment. You have moved amendment No. 453.

Maulana Hasrat Mohani: Yes—this and the other one.

Mr. President : Which other one? We have only one amendment.

Maulana Hasrat Mohani: The alternative!

Mr. President : That does not make any difference.

Dr. B. Pattabhi Sitaramayya: You said before that if there are alternative amendments and one of them is moved, the other one would be blocked.

Mr. President : I do not see much difference between the two amendments. They are more or less the same. Therefore whether the one or the other is accepted does not matter.

Dr. B. Pattabhi Sitaramayya: So, if they are the same, only one can be accepted.

Mr. President : Whichever he moves, that I will put to the House.

Maulana Hasrat Mohani: So I have read out the official report. I refer to volume IV

Mr. President : The object of putting the Preamble last was that the Preamble may be in conformity with the Bill as accepted.

Maulana Hasrat Mohani: When I wanted the Preamble discussed at the very beginning you said we will not allow you to discuss it. I therefore pointed out that I was suspicious that when you had passed all the other articles according to your wishes, if any one else proposed anything about the Preamble you would say that it was not possible to go back on what we had passed it is now a settled fact and you will then rule me out of order. You gave me a promise that you would not do that and I have that in the printed report.

Dr. B. Pattabhi Sitaramayya: Well, you have been good enough to disallow the point of order but he admits the point of order and therefore he must be ruled out now.

Maulana Hasrat Mohani: What is the point of order?

Mr. President : Maulana Sahib, you are referring to something that I promised. I just want to have that.

Maulana Hasrat Mohani: I will read out to you what you said on a previous occasion. I have here also an admission on the part of Dr. Ambedkar himself. I refer you to the printed report, volume 7, No. 6, page 418 where he says that he will not object to any amendment being proposed at this stage.

With regard to yourself, I refer you to volume 4, No. 6 on page 733. That was the occasion when the report on the proposed Union Constitution was presented by Pandit Jawaharlal Nehru. I raised an objection at that time and you said that "you need not obstruct him just now". You said I could raise this objection afterwards. "As I understand it, the Maulana's point is that I should give him a promise at this stage that his amendment will not be ruled out of order." Then you said "More than this I cannot say anything at this stage." "I have given some sort of promise that Maulana wanted. I take it that the House wishes that we should proceed with the consideration of this report." I objected and said that I would not allow this report to be considered and then you said that I can raise my objection afterwards and for the present I may, allow Pandit Jawaharlal Nehru to proceed with; this report and it was on that understanding that I refrained from saying all these things at that time.

Mr. President : Far from giving a promise I definitely refused to give a promise. I read the relevant portion of the debate: "As I understand it, the Maulana's point is that I should give him a promise at this stage that his amendment will not be ruled out of order. Obviously I cannot give any promise to any Member before the matter actually comes up. But you may all have noticed that I am very liberal in the matter of allowing amendments to be moved even if they come out of time. Unless there is any technical ground, I do not see any reason why his amendment may be ruled out of order. More than this I cannot say anything at this stage."

Maulana Hasrat Mohani: I have been given some sort of promise. Very well, Sir. According to that report the Committee appointed for framing the constitution was given a clear directive that the Constitution should be framed in accordance with the Objectives Resolution passed by this Assembly. It is quite strange that instead of following the Objectives Resolution, Dr. Ambedkar is passing anything he likes. He wants the Objectives Resolution to be in conformity with his erroneous decision. He has reversed the order and this is what I object to most because it has changed the character of the Constitution. As I pointed out here, what was the object of the Objectives Resolution and the

report. They said that it will be a Federation of sovereign Independent Republics. Mark this plural form "Republics". Now he has reversed the whole thing. He has dropped the word 'Federation'; he has dropped the word Republic and he has dropped also the word, 'independent' for some ulterior motive which I am not going to disclose at this moment. I reserve it for a future occasion when I win throw is in his face when the time comes. For the present I say that according to the Objectives Resolution and according to the instructions given by Pandit Jawaharlal Nehru they should at least change this article in this way, that the spirit of what he suggested may be included in the article proposed by Dr. Ambedkar. He in fact, accepted this thing; he drops the word 'independent'. For the word 'independent' I want to put the word 'Federal' that is, a sovereign federal Republic; it does not matter if it is not a Republic. When I say a Sovereign Federal Republic, it means a Republic and the State units of that will also be Republics or it will be a federation, at least not what he wants. Instead of having a Republic or any Federation, he wants only a Union of States and the 'Union' also in the sense of a Federation. I say 'No'. He takes that word only because it implies also a sort of a unitary system, and whatever he wants he has reversed and changed the whole character of this Constitution. We mean and the Objectives Resolution means that India will be made a Federation of Independent Republics and he now says "No". India will be transformed and in the place of the British Empire you will create an Indian Empire which will consist only of States which will have got no power and in the States you have also included and brought down the Provinces also. Formerly, I thought that the States will get the benefit of this inclusion but you have brought down the provinces also and you have deprived them of everything and even the sort of provincial autonomy has been taken away and in fact you have allowed nothing for the Provinces. You decided that you win have elected governors for the provinces. I objected to the word 'governors' in the very beginning and when Pandit Jawaharlal Nehru said "I cannot satisfy the Maulana; he is a very deep man. He is afraid of this word 'Governor', I suggested that instead of the word 'Governor' we may put the word "President" also in regard to the provinces. They said that they need not do that. I did not press that matter at that time but now I find on hearing the explanations given by Dr. Ambedkar that he has reversed the whole picture and he has let the cat out of the bag. He has clearly said: "What will be India that is Bharat? It will be a Union of States." What does this mean? You have discarded the word 'Republic'; you have discarded the word "Federation"; you have discarded the word "Independent", and my honourable Friend, Dr. Ambedkar says: "Well, what does it matter? It does not matter when we say Republic. It is immaterial whether you call it independent or not". I say if this is immaterial why is he so anxious to change that word 'independent' into 'democratic'? There is something secretly going behind the scenes and I pointed out on a previous occasion that when Pandit Jawaharlal Nehru changed his mind and went to England to have some sort of connection with the British Commonwealth, then he thought that we will have a Republic and also 'independent'. So he wanted to create a loop-hole for himself because he can now say. "We are already a Republic". We are not an independent Republic. What sort of a Republic are we? Some sort of Republic that these European countries, these Imperialists, who are past-masters in this jugglery of words, have coined new phrases; and what are these new phrases? Holland has invented a phrase a Republican Dominion and France has coined a new word for Vietnam which says that it will be a colonial Republic. We admit that Vietnam is a Republic and Holland says that they have accepted Indonesia as a Republic but it says it is a Republican Dominion. Instead of the Dominion it will be included in an imperial regime and that fraud was brought about by Holland and by France and do you propose that you will also bring about the same fraud to be enacted here?

[Maulana Hasrat Mohani]

You said that we have got the word Republic. You have dropped the word Federation. You will also say that of course Pandit Jawaharlal Nehru has agreed to remain in the British Commonwealth because they accept we are independent. But, what sort of independence? It will be a republican dominion. Because if it is a real republic and not a republican dominion, you should have nothing to do with any King or Emperor directly or indirectly in any manner. When once Pandit Jawaharlal Nehru has agreed to remain in the British Commonwealth, I think he has forfeited his right to call India as a Republic. It is not a republic. If it is a republic, it is a republican dominion, as I said just now.

So, my alternative proposal is this. Either introduce the word 'Federal' instead of the word "Democratic". It will make something clear. If you do not want to introduce this word 'federation', if you are afraid of it, I will grant a concession to Dr. Ambedkar and you stick to the original wording of the Objectives Resolution which is given here. It will be "Independent Sovereign Republic." I say, drop this word 'democratic' and keep to the actual words used in the Objectives Resolution. If you use the words "Independent Republic" my object will be served. I come forward and say that whatever has been done by Pandit Jawaharlal Nehru is absolutely a false policy.

Mr. President : Does any one else wish to say anything about this amendment? I will put it to the vote. First alternative.

The question is:

"That in the Preamble for the words, 'We, the people of India, having solemnly resolved to constitute India into a Sovereign Democratic Republic' the following be substituted:—

'We, the people of India, having solemnly resolved to constitute India into a Sovereign Federal Republic.' "

The amendment was negatived.

Mr. President : I shall put the second alternative.

The question is:

"That in the Preamble, for the words, 'We, the people of India, having solemnly resolved to constitute India into a Sovereign Democratic Republic' the following be substituted:—

'We, the people of India, having solemnly resolved to constitute India into a Sovereign Independent Republic.' "

The amendment was negatived.

Mr. President : We shall take up the other things when we meet at six o'clock.

The Assembly then adjourned for Lunch till Six p.m.

The Assembly reassembled after Lunch at 6 P.M., Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

Mr. President : We have to take up the other amendment now. There is one in the name of Maulana Hasrat Mohani, No. 9.

Maulana Hasrat Mohani: Mr. President, I move:

“That in the Preamble, for the words ‘We, the People of India, having solemnly resolved to constitute India into a Sovereign Democratic Republic’ the words ‘We, The People of India, having solemnly resolved to constitute India into a Union of Indians socialtic Republics to be called U.I.S.R. on the lines of U.S.S.R.’ be substituted.”

Shri Deshbandhu Gupta: May I now raise the point of order again and submit that it is out of order because it goes counter to the Constitution we have passed?

Mr. President : A point of order has been raised that the whole Constitution that has been framed and accepted by this House is inconsistent with this amendment of the Preamble and therefore it should be ruled out of order.

Maulana Hasrat Mohani: It was for this very point I requested you to save me from this sort of manoeuvring. I am not going to repeat the same things. The other day I proposed this very thing in connection with article 1. What I am going to propose today is on a different basis. If you find me repeating the same argument, you can declare me out of order but if I say something quite new which has nothing to do with my amendment to the First article of the Constitution, I think I am entitled to some indulgence on your part. As I showed in my statement earlier, you gave a sort of promise that you will not rule me out abruptly ,or without any consideration. Of course if you still think that I have nothing new to say and you find me repeating, you can rule me out; but if it is something, quite different from what I said in connection with article 1, then of course I do not see any reason why my amendment should be ruled out of order.

Dr. B. Pattabhi Sitaramayya: May I know whether the vote that was taken this morning was a vote to reject Maulana’s amendment? There was no positive vote on the wording of the Preamble?

Mr. President : I did not take any.

Dr. B. Pattabhi Sitaramayya: Therefore all that was done was to reject this amendment to substitute ‘independent’ or ‘Federal’ for the word ‘Democratic’.

Mr. President : Maulana, what I have to decide is not whether you are going to repeat or not. The point is whether this is in order or not. The objection .is that it is inconsistent with the whole Constitution we have passed. What have you to say about that?

Maulana Hasrat Mohani: I do not know how it is inconsistent. Because the words in the Preamble are ‘Sovereign Democratic Republic’. I say that instead of these you can say ‘Union of independent Republics’. Where is the inconsistency? I do not find any inconsistency in that.

Mr. President : Do you really suggest that the Constitution we have passed is on the lines of U.S.S.R.?

Maulana Hasrat Mohani : I am not going to say anything of the kind I do not say we should go and merge in the U.S.S.R. or that you should adopt the same Constitution; but what I want to say is that we should work out our Constitution along the lines and on the pattern of Soviet Russia. It is a special pattern and also republican pattern and also it is of a centrifugal pattern.

Shri Jainarain Vyas (Rajasthan): May I enquire if the honourable Member is making a speech or replying to the point of order?

Mr. President: He is replying to the point of order.

Maulana Hasrat Mohani: When I propose this that we are not going to merge ourselves with Russia or we are not going to adopt the Constitution of U.S.S.R., I am only suggesting that the Constitution and the Preamble we are adopting here in this Second reading must be on the same lines, of the same pattern as the U.S.S.R. plan and I do not think there is any thing inconsistent in that. What are those considerations? What are the Fundamental principles of the U.S.S.R.? They are three. First that it will be federal constitution. Secondly that it will be a centrifugal federation, and at the same time, the Centre, after getting some central powers, it again delegated those powers to their constituent units, declaring that they.....

Mr. President : I think it will save time if I allowed Maulana Sahib to move his amendment, without giving any ruling. So you had better finish your speech.

Maulana Hasrat Mohani : Some of my friends here, whenever they hear the word "Soviet", say, "He is an agent of the Soviet Government, and he is in the pay of the Soviet Government." I do not think anybody in this world can accuse me of that kind of thing.

Mr. President : Nobody has said that in this House.

Maulana Hasrat Mohani: They are the henchmen of the Soviet, they carry out the orders they receive from the Soviet Government. I have no connection with them. I have got no connection with the Communist Party of India even, because I refused to join them on the ground that once they made the mistake of saying that we have got a common ground with England because we are both fighting Nazism. I said then, and I say it now, "Anybody who helps any foreign Government, especially the British Government, under any terms or for any motive, I say that he is wrong."

Mr. President : Maulana Sahib, let me remind you that we are not concerned with biographical details. You will please speak on your amendment.

Maulana Hasrat Mohani: I am not going to say anything to which anyone can take objection. I have nothing to do with the Soviet Government or the Soviet Constitution. I want only our Constitution and our Preamble to follow the lines adopted by the Soviet Government, and those are the three lines which I have mentioned. That is to say, our Constitution must be federal, and also along with being federal, it must be centrifugal, that the constituent States or Republics should willingly hand over certain central powers to the Centre. And after that, to obtain the goodwill of the constituent units, they again, I mean the Soviet Government again, gave freedom to their constituent units or republics. They said, "If you find at any time that the Centre is deciding something against your interest, you are at liberty to differ from the Centre." And therefore, they gave them the simultaneous right, and if they found anything going wrong, any proposal of the Centre, they could at once go. out and they said that even when the war was raging. They said to all those Muslim republics of the U.S.S.R., "If you like, you can go and fight on whichever site you want. If you do not like to fight for us, we do not press you. What was the result? The U.S.S.R. took them into its confidence and the result was not a single Muslim went against the Soviet Republic. Everyone fought, whole heartedly with the Soviet Government. What was the reason for this? They did so, because they found they had been taken into the confidence of the U.S.S.R. They were not made to leave the Soviet group. Why should they leave them? They were also cautious. They, would

never propose anything which might obviously go against the interest of their Constituent units.

So by adopting this conciliatory attitude they have attained that kind of from and that kind of success that has never been known in the world before. I say, Sir, that we should also follow the same policy, and we should also adopt the same attitude. We should also take out minorities into our confidence. Instead of doing that, you are going to out caste the altogether. You are passing anything you like, without the slightest consideration for the interests of even your political minorities. You do not care a fig about us, You see, your Bengal Government and your Madras Government have declared the Communist Party to be unlawful, on the ground that the Communists have adopted some unlawful means, that they are fighting, killing, murdering and looting. Well, I say that the same thing can be said by the Communists. They can say, "You do not allow us any scope, you do not allow us to take an independent and constitutional attitude, and you....."

Mr. President: May I remind you, that we are not in the Legislative Assembly, but we are here in the Constituent Assembly, and we are not concerned with what is happening in the country at the present moment.

Maulana Hasrat Mohani: Very well, Sir, I have only a few sentences more to speak in this connection and I am not going to take very long over them.

Supposing you say that the Communists can fight a free election in the next election, with joint electorates and all that, and without any restriction. But how are they going to do that? Supposing the Communist Party wants to adopt this constitutional means, will you allow them to issue their manifesto, which must certainly be against your principles? Will you allow them to have their agents for the elections? Will you allow them to have their own workers who will approach every voter? You will not do anything of that kind. Once they issue their manifesto, you will at once send them to the prison. So it is a question of whether the hen came first or the egg came first. You imprison them because they adopt violent means, and they say, "We are forced to resort to violent means because you do not leave us any scope for constitutional means."

Mr. President : Maulana Sahib, you are not speaking on your amendment.

Maulana Hasrat Mohani: Very well. I have only to request Dr. Ambedkar and this House to adopt the same conciliatory attitude to all political minorities and to adopt the same principles as have been adopted by the Soviet Union. I am not going to ask you to join the Soviet Union or to adopt their Constitution. With these few words, I propose my amendment and request Dr. Ambedkar to accept it.

Mr. President : Does anyone wish to say anything about this amendment?

Honourable Members: No.

Mr. President : Then I will put it to vote.

The question is:

"That in the Preamble for the words 'We, the People of India, having solemnly resolved to constitute India into a Sovereign Democratic 'Republic' the words 'We The people of India, having solemnly resolved to constitute India into a Union of Indian Socialistic Republics to be called U.I.S.R. on the lines of U.S.S.R., be substituted."

The amendment was negatived.

Mr. President : Now we have got a large number of amendments of which notice is given by other Members. Some of these amendments relate to two things. In some of them the name of God is brought in some form or other in this Preamble. In some others, the name of Mahatma Gandhi is brought in some form or other. Then there are some in which some amendments are suggested to the wording. But those are rather minor things, and the main amendments are really those in which the name of God is brought in, or the name of Mahatma Gandhi is brought in, or both together. Now, I would like to know from Members if they insist upon these amendments being moved, because I cannot prevent them from moving them; but I would suggest that neither God nor Mahatma Gandhi admits of a discussion in this House. (Hear, hear).

Shri H. V. Kamath: Mr. President, may I move my amendment No. 430?

Mr. President : If it is moved it may have to be voted upon.

Shri Deshbandhu Gupta: Sir, before Mr. Kamath moves his amendment, may I draw the attention of the House to the fact that when the Assembly passed the Objectives Resolution solemnly, all Members—standing, the Prime Minister at that time had made an appeal in these words:

yet,

“It is a Resolution and it is something much more than a resolution. It is a declaration. It is a firm resolve. It is a pledge and an undertaking and it is for all of us I hope a dedication..... and I wish this House, if I may say so respectfully, consider this Resolution not in a spirit of narrow legal wording, but rather look as the spirit behind that Resolution.”

The Preamble is no less important and the Prime Minister's remarks are equally applicable to same. I therefore appeal to Mr. Kamath that this may be borne in mind.

Mr. President : May I just point out to Mr. Kamath one thing? In the Schedule III which we have passed an oath or affirmation is prescribed for Ministers and others who have to take office. We have put the thing in the alternative form, such as ‘Swear in the name of God’ or, ‘Solemnly affirm’ so as to give freedom of choice to the believers and the non-believers to take the oath or the affirmation. Now here, would you like this thing also to be in the alternative form?

Shri H. V. Kamath: Here we are not individuals. Here we are all the people of India. There is much difference between the two.

Mr. President : The people of India includes individuals. If you insist upon moving your amendment I cannot prevent you. But I would suggest to you not to insist upon it.

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

Shrimati Purnima Banerji (United Provinces: General). Mr. President, I would beg of you to see that the matter of God is not made the subject of discussion between a majority and a minority. It is most embarrassing. To most of us, believers and non-believers, it will be difficult to affirm or deny God. Let us not try to invoke His name in vain. It should not be brought up in this form and the Members compelled to vote one way or the other. The flame of God is invoked by every nation upon earth and God is an Impartial Entity and He should be allowed to remain so. With these words, I appeal to Mr. Kamath not to put us to the embarrassment of having to vote upon God.

Shri H. V. Kamath: I regret I cannot accept the appeal. I shall move amendment No. 430 standing in my name. Sir, I move:

“That in amendment No. 2 of the List of Amendments (Volume I), the following be substituted for, the proposed preamble:-

‘In the name of God,

We, the people of India,

having solemnly resolved to constitute India into a Sovereign democratic republic, and to secure to all her citizen

Justice, social economic and political;

Liberty of thought, expression, belief, faith and worship;

Equality of status and of opportunity; and to promote among them all;

Fraternity. assuring the dignity of the individual and the unity of the nation;

in our Constituent Assembly do hereby adopt, enact and give to ourselves this Constitution.’

Dr. B. Pattabhi Sitaramayya: ‘The amendment is only in the first line, you see, Sir?’

Mr. President : It is exactly the same as the Preamble except that it begins with ‘In the name of God’.

Honorable Members: No speech, please.

The Honourable Shri K. Santhanam: I rise to a point of order. The amendment moved must have a meaning.

Mr. President : It is not a point of order really.

Shri H. V. Kamath: I can reply to Mr. Santhanam. My amendment means, in the name of God we do this and that. No long speech is needed to commend this motion. Besides invoking the name of God, I have taken a little liberty with only one word, and that is, I have changed the word ‘Its’ citizens to ‘her’ citizens.

Shri A. Thanu Pillai: (Travancore and Cochin State): May I rise to a point of order, Sir? If Mr. Kamath’s amendment is accepted,-of course I am a believer in God-would not that amount to compulsion in the matter of faith? Is it not out of order to move a motion like that? It affects the fundamental right of freedom of faith. A man has a right to believe in God or not, according to the Constitution. In that view this amendment should be ruled out, though I am myself a staunch believer in God.

Shri. H. V. Kamath: My reply to Mr. Thanu Pillai is that we are passing this in the name and on behalf of the people of India. All that we have done, here in this Assembly has been in the name and on behalf of the people of India.

Shri Rohini Kumar Chaudhury (Assam: General): May I move an amendment to that of Shri Kamath that, instead of ‘In the name of God’, would he be pleased to accept ‘In the name of Goddess’? (laughter).

Shri H. V. Kamath: Mr. President, all that we have done in this House has been done on behalf of and for the people of India, and all decisions have been taken here by the vote of the House. Whether this becomes a matter for the vote of the House or not, I am sure in their heart of hearts the people of India for whom we have been working and toiling here for the last three years would endorse this amendment in toto. That is so far as the point raised by Mr. Pillai is concerned.

I have taken only a slight liberty with the text of the Preamble. As I have pointed out, I am sticking to the wording of the Objectives Resolution moved

[Shri H. V. Kamath]

by Pandit Jawaharlal Nehru in December 1946. In the first part of it, the future with reference to the governance of the country the words used are “her future governance”, her being apt for the motherland. That being so, we should say ‘her’ and not ‘its’ citizens in the Preamble. I would leave this however to the Drafting Committee.

As regards the substance of the motion I do not propose to make a long speech. In this august House, the first Constituent Assembly of India, of our Bharata Varsha, in this land, ancient but ever young, which has through the ages renewed itself at the Divine Fountain, let us consecrate this Constitution by a Solemn dedication to God in the spirit of the Geeta.

Yatkaroshi yadashnasi

Yajjuhoshi dadasi yat

Yattapasyasi Kaunteya

Tatkurushwa madarpanam.

Whatever our shortcomings, whatever the defects and errors of this Constitution let us pray that God will give us strength, courage and wisdom to transmute our baser metal into gold, through hard work, suffering and sacrifice for India and for her people. This has been the voice of our ancient civilisation, has been the voice through all these centuries, a voice distinctive, vital and creative, and if we, the people of India, heed that voice, all will be well with us.

Shri V. I. Muniswamy Pillay (Madras: General): I strongly support the motion moved by Mr. Kamath.

(Prof. Shibban Lal Saksena rose to speak.)

Mr. President : Do you want to move any amendment?

Prof. Shibban Lal Saksena: Yes, Sir; No. 3.

Mr. President : Does anyone wish to speak on this amendment which has been moved by Mr. Kamath?

Shri M. Thirumala Rao (Madras: General): Are you allowing Mr. Saksena to move his amendment? I want to speak a few words on Mr. Kamath’s amendment.

Mr. President : We are now on Mr. Kamath’s amendment.

Shri Mahavir Tyagi: May I remind Dr. Ambedkar of the promise he made to me on another occasion. May I read a few lines, Sir ? Sir, on the 15th November 1948 when the question was discussed, Dr. Ambedkar had asked me to remind him about this question of sovereignty, I said-

“I hope..... that his draft means that it (sovereignty) vests with the people, and big explanation may well go down into the records for future reference.”

He replied -

“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.”

Mr. President : That is not the point. At the present moment we are on Mr. Kamath’s amendment, not on that. We are not dealing with that question now.

Shri M. Thirumala Rao : It is unfortunate that Mr. Kamath has not seen his way not to press his amendment to a vote. This is a thing of such vital

importance and affects the life of the whole nation, that it should not be subjected to the vote of a House of three hundred people whether India wants God or not. We have accepted that God should be there in the Oath, but for those who do not believe in God, there is an alternative there, but there is no possibility of a compromise which can provide for both the things in the Preamble. Therefore, I think it would be better that Mr. Kamath withdraws his amendment and does not subject God about Whom he spoke in such reverent terms to the vote of the House, and if it comes to the vote, it will not be fair to ourselves and to the nation.

Dr. B. Pattabhi Sitaramayya: May I request that that amendment may be disposed of first before we take up anything else?

Pandit Hirday Nath Kunzru: It is a matter of the deepest regret that a matter that concerns our innermost and most sacred feelings should have been brought into the arena of discussion. It would have been far more consistent with our belief in the highest truths and our determination to adhere firmly to them that we should not seek to impose our own belief on others. I recognise the sincerity of Mr. Kamath and of those who agree with him, but I do not see why in a matter that vitally concerns every man individually, the collective view should be forced on anybody. Such a course of action is inconsistent with the Preamble which promises liberty of thought, expression, belief, faith and worship to everyone. How can we deal with this question in its narrow spirit? We invoke the name of God, but I make bold to say that while we do so, we are showing a narrow, sectarian spirit, which is contrary to the spirit of the Constitution and which we should try to forget at this time when we have reached the end of a very important stage of our labours.

Shri Rohini Kumar Chaudhury: Sir, I am at once with my Friend, Pandit Kunzru, in objecting to the amendment which has been moved by my Friend, Mr. Kamath. Sir, I have great admiration for my Friend, Mr. Kamath. I am one who has unbounded confidence in him so far as political affairs are concerned. I must confess that I am very sadly disappointed in him this evening. By this amendment, he shocked the feelings of many when he stoutly refused to accept the amendment which I proposed. Sir, it is not a matter of laughter with me. I believe in a Goddess. I belong to Kamrup where the Goddess Kamakhya is worshipped.

An Honourable Member: God includes Goddess.

Mr. President : It is bad as it is that we have brought in the name of God in our discussion. We should not become flippant about it.

Shri Rohini Kumar Chaudhury: We should remember that when we started our political movement, we started it with the singing of Bande Mataram. What does Bande Mataram mean? It means an invocation to a Goddess. It means belief in a Goddess. Sir, we who belong to the Sakthi cult, protest against invoking the name of God alone, completely ignoring the Goddess. That is my submission. If we bring in the name of God at all, we should bring in the name of the Goddess also. As I said, this amendment should not have been brought. But as it has been brought, this is my point of view.

The Honourable Shri Satyanarayan Sinha (Bihar: General): Sir, the question may now be put.

Pandit Govind Malaviya (United Provinces: General): Sir, I wish to say a few words.

Mr. President : There are so many others who are wanting to speak. But it has now been suggested that the matter be closed.

Pandit Govind Malaviya: It has been said that we should not impose our will on any section. I hope the other section of the House also will not do that. I wish, with your permission to say a few words on this matter.

Mr. President : But closure has been moved. I shall put the closure motion to vote.

The question is:

“That the question be now put.”

The motion was adopted

Mr. President : Now I have to put the amendment moved by Mr. Kamath to vote. There is no alternative left to me.

The Honourable Dr. B. R. Ambedkar : He may be asked to withdraw it.

Mr. President : I suggested to him not to move it. It rests with him to withdraw it.

Shri H. V. Kamath: I am not withdrawing it.

Mr. President : He says he does not withdraw it.

The question is:

“That in amendment No. 2 of the List of Amendments (Volume 1), the following be substituted for the proposed preamble:-

‘In the name of God,

We, the people of India.

having solemnly resolved to constitute India into a Sovereign democratic republic, to all her citizens,

Justice social, economic and political;

Liberty of thought, expression, belief, faith and worship;

Equality of status and of opportunity; and to promote among them all

Fraternity, assuring the dignity of the individual and the unity of the nation;

in, our Constituent Assembly do hereby adopt, enact and give to ourselves the Constitution.”

Shri H. V. Kamath : I claim a division.

Pandit Govind Malaviya: I want a division on this question.

Maulana Hasrat Mohani: I also want a division on this question.

Pandit Govind Malaviya: I want a division because I feel that we are doing an injustice to this country and to its people and I want to know who says what on this matter.

The Assembly divided by show of hands.

Ayes: 41.

Noes: 68.

The amendment was negatived.

Shri H. V. Kamath: This, Sir, is a black day in our annals. God save India.

Pandit Govind Malaviya: Sir, it is so vital a matter and I again beg of you that we might have a division on this matter.

Mr. President : I have had the division now.

Shri A. Thanu Pillai: Sir, Mr. Kamath should not have made that statement and he should withdraw it.

Mr. President : I may tell Pandit Govind Malaviya this. I have got here in our Rules the following:

“A matter requiring the decision of the Assembly shall be brought forward by means of a question put by the Chairman.

In all matters requiring to be decided by the members of the Assembly, the Chairman shall exercise a vote only in the case of an equality of votes.

Votes may be taken by voices or division and shall be taken by division if any member so desires.”

Here I have taken the voices and then I have adopted the particular method of division by asking members to raise their hands, instead of asking them to rise in their places. I think I have substantially fulfilled the requirement of the Rules.

Shri Mahavir Tyagi: On a point of order, Sir, the President has already once laid down, by means of a Standing Order, as to what will be the method of Division. I have not got the Order with me because it was issued separately. In that Standing Order it is mentioned in so many words that when a member calls a Division the President shall get all tile doors closed and say “Ayes to the Right. Noes to the Left.” And then the members will file past by the side of the Tellers. That Standing Order was issued during the session and the requirement of that Standing Order has not been fulfilled.

Mr. President : You have not read the rule rightly. Paragraph (4) of rule 30 says: “The Chairman shall determine the method of taking vote by division.” I have followed that.

Shri Mahavir Tyagi: My point is once the standing order was issued it cannot be changed verbally.

Mr. President : Is it suggested that paragraph (4) of rule 30 is superseded?

Shri H. V. Kamath: That has been amplified and clarified in your office circular.

Mr. President : It does not require any clarification. It is very clear. The Chairman shall determine the method of taking voice by division:

“If in the opinion of the person presiding, a division is claimed unnecessarily (that is to say, when he is satisfied in any particular case that there is a clear preponderance of opinion in support of his declaration and against the challengers) he may not follow the ordinary method of having votes recorded in the division lobbies but may have the vote of the House by asking the members who are for ‘Aye’ and for ‘No’ respectively to rise, in their places and thereupon as he thinks fit, may either declare the determination of the House immediately or may order a division to be held. When the Chairman there and then declares the determination of the House, the names of voters will not ordinarily be recorded.”

An Honourable Member: The word “division” has got a particular meaning in point of phraseology. Claiming of division means that names will have to be recorded. It is not mere counting of hands. That is the practice followed in the Legislative Assembly.

Mr. President : We are not concerned with the procedure in other places. Our procedure is governed by our own rules and I have taken the division in the sense intended by that order. That is my final ruling.

Pandit Govind Malaviya : I have no doubt about the rules. They are quite clear. It is for the Chair to decide the manner in which the views of the House should be obtained. I did not have any doubt in my mind when I made the request to you. But since it is so important a matter about which many of

[Pandit Govind Malaviya]

us feel so very keenly, I leave it to you to decide whether anything more should be done. If you are satisfied that what has been done is not enough then in view of our request and our feeling, if you could consider it feasible to have some other method for a division adopted, we shall be very grateful.

Mr. President : I am perfectly satisfied that I have got the view of the House correctly and that is all I am concerned with. We shall go to the next item.

Pandit Govind Malaviya: There was an amendment in my name on this point. You have decided that only Mr. Kamath's amendment will be moved, but my amendment is quite different. It does not bring in the name of God and it is possible that it may not be offensive to anybody.

Mr. President : I am now going to take the amendments as they are on the Order Paper. I will see what is to be done about your amendment when we come to it. Prof Shah is not here; so his amendment is not moved. Then Mr. Saksena's amendment.

Prof. Shibban Lal Saksena: Sir, I beg to move:

“That for the Preamble, the following be substituted:—

‘In the name of God the Almighty, under whose inspiration and guidance, the Father of our Nation, Mahatma Gandhi, led the Nation from slavery into Freedom, by unique adherence to the eternal principles of Satya and Ahimsa and who sustained the millions of our countrymen and the martyrs of the Nation in their heroic and unremitting struggle to regain the Complete Independence of our Motherland,

We, the people of Bharat, having solemnly resolved to constitute Bharat into a Sovereign, Independent, Democratic, Socialist Republic, and to secure to all its citizens:

JUSTICE, social, economic and political,

LIBERTY of thought, expression, belief, faith and worship,

EQUALITY of status and of opportunity; and to promote among them all;

FRATERNITY assuring the dignity and freedom of the individual and the unity of the country and the Nation:

In our Constituent Assembly this;..... day of Vikrami Samvat 2006 (the 26th day of January, 1950 A.D.) do hereby enact, adopt and give to ourselves this Constitution.’ ”

I have been very much pained to see the attitude of some of our friends regarding the introduction of the holy name of God and the Father of the Nation at the banning of our Constitution. While they have a right to have their say, other people also have a full right to have their say. This country has always prided on its discoveries in the realm of the spirit and we are now afraid even to put in God's name at the commencement of our Constitution. I am one of those who think that we have produced a great piece of work by preparing this Constitution. There may be some defects in it. But I am sure we have done some very great things. It is only meet and proper that the name of God and the name of the Father of the Nation should be put at the beginning of our Constitution. I am sorry that some people should have thought that we are forcing it on them. There are other Constitutions in the world—the Irish Constitution, for instance—wherein in the very beginning in the Preamble God has been mentioned and homage has been paid to the martyrs who won their freedom. I have therefore been very much pained to

feel that some Members merely at the mention of the name of God or the Father of the Nation feel that something is sought to be forced upon somebody. If they feel that way, they are at liberty to have their opinion, but why force others who feel intensely in the matter to eliminate God's name? I greatly regret the attitude of my friends. I hope they will reconsider it. This Constitution will probably build our country on a new pattern and on the basis of the ideals set by the Father of the Nation. It is therefore meet and proper that we should humble ourselves before God and pay homage to the Father of the Nation by incorporating their names in the very beginning of the Constitution.

Shri Brajeshwar Prasad (Bihar: General): Mr. President, I rise to oppose the amendment moved by my Friend Prof. Shibhan Lal Saksena. I do not want that the name of Mahatma Gandhi should be incorporated in this Constitution, because it is not a Gandhian Constitution. The foundation stones of this Constitution are the decisions of the American Supreme Court. It is the Government of India Act, 1935, repeated again. If we had a Gandhian Constitution, I would have been the first to offer my support. I do not want that the name of Mahatma Gandhi should be dragged in this rotten Constitution.

Mr. President : I will now put this amendment to vote.

Acharya J. B. Kripalani (United Provinces: General): May I request the Mover of the amendment to withdraw it? It is not behaving us to vote on this amendment. We must be very sparing of the use of the name of the Father of the Nation. My Friend Shibhan Lal knows that I yield to nobody in my love and respect for Gandhiji. I think it will be consistent with that respect if we do not bring him into this Constitution that may be changed and reshaped at any time.

Prof. Shibhan Lal Saksena: Sir, in response to the appeal of Acharya Kripalani, I beg to withdraw my amendment.

The amendment was, by leave of the Assembly withdrawn.

(Amendment No. 4 was not moved.)

Pandit Govind Malaviya: The amendment of which I had given notice ran thus:

That in the Preamble, for the words 'We the People of India' the following be substituted:—

'By the grace of Parameshwar, The Supreme Being, Lord of the Universe (Called by different names by different Peoples of the world).

From Whom emanates all that is good and wise, and Who is the Prime Source of all Authority,

We the people of Bharata (India).

Humbly acknowledging our devotion to Him,

And gratefully remembering our great leader Mahatma Mohandas Karamchand Gandhi and the innumerable sons and daughters of this land who have laboured, struggled and suffered for our freedom, And."

Dr. P. S. Deshmukh: I rise to a point of order. The essence of this amendment is in two respects. It introduces the name of God and it brings in the name of Mahatma Gandhi. Both of these issues have been decided by this House. In one case there has been some debate and voting; in the other case the honourable Gentleman has withdrawn the motion. I therefore urge

[Dr. P. S. Deshmukh]

that this amendment should be ruled out of order since the main ingredients in that amendment have been already decided by the House.

Pandit Govind Malaviya: If the words which I had used had been noted, it would have been seen that I had said that I was reading the amendment which I had intended to move. I had said that "it ran thus and thus". If the House had borne with me for a moment, I was going to say, Sir that this was the amendment of which I had given notice, but in view of the session which had just taken place what I wished to move now was:

I would delete the last portions referring to Mahatma Gandhi and others, and would also delete the word Parameshwara at the beginning. That was what I was going to say to meet the point of view which has been expressed.

The Honourable Dr. B. R. Ambedkar : They have been disposed of:

Pandit Govind Malaviya: Then the amendment would read:

"By the Grace of the Supreme Being, Lord of the Universe, called by different names....."

Maulana Hasrat Mohani: Is he proposing some new amendment? I rise to a point of order. He is out of order. He is proposing something new.

Pandit Govind Malaviya: Then it will satisfy even the unreasonable point of view which has been expressed here. We will not be referring to 'God' as such or to anybody's particular God because my amendment says "called by different names by different peoples of the world" and yet we would be able to put into our Preamble something which has been the most distinctive and permanent feature of the thought and belief, of the tradition, of the culture and of the history of the entire life of the people of this country from time immemorial. I submit, Sir, that we have come here as representatives of the people of India. Honesty demands that we should record here what may be their view. In this Preamble, Sir.....

Mr. President : I shall decide the point of order. The first point is whether it is covered by the amendment which has been defeated. I think it is covered.

Pandit Govind Malaviya: Even after the deletions, if you think so, I shall take my seat.

Mr. President : By simply omitting the word Parameshwar you do not take out of the amendment which has been defeated.

Pandit Govind Malaviya: I thought the objection of some of our friends was to the word "God". I shall obey your Ruling, Sir.

Shri Mahavir Tyagi: I do not want to move my amendment No. 11 but I want to ask Dr. Ambedkar if he is going to keep to the promise he had made.

Mr. President : That is a different matter.

Shri Mahavir Tyagi: He told me to remind him at the time when the Preamble was being discussed.

Mr. Naziruddin Ahmad: If there is a breach of promise, then my friend should go to Court!

Shri Mahavir Tyagi: It is not a question of breach of promise. I was assured according to the proceedings, by what Dr. Ambedkar had stated about the investment of sovereignty. I had moved an amendment and he had replied that

the meaning was “vested in the people” but it was not defined in so many words I had insisted that it be ascertained. Dr. Ambedkar said: “You doubt that it vests with the people. I might tell my friend that I shall not have the least objection.”

Mr. President : Is there any amendment?

Shri Mahavir Tyagi: But this is for the Drafting Committee to do it.

Shri Satish Chandra (United Provinces : General): There is an amendment No. 452 in list XXI to the same effect, standing jointly in the names of Shrimati Purnima Banerji and myself.

Shri Mahavir Tyagi: If you permit me they might accommodate it in the Drafting Committee.

Mr. President : I understand there is an amendment to that effect. We shall have to take it up when we come to it.

Amendment No. 14: there are several amendments with regard to the name. Those do not arise now.

Does any Member who has given notice of the amendments printed in the first volume wish to move his amendment?

Honourable Members: No.

Mr. President : I shall go to the supplementary list. There are amendments in the supplementary printed list and I take it that no Member wants to move any of those amendments either.

Honourable Members: No, no.

(At this stage Shrimati Purnima Banerji rose to speak).

Mr. President : Yours is one of these recent amendments, but I am now thinking of the old printed list.

Then we come to amendment No. 452.

Shri Brajeshwar Prasad: There is amendment No. 313 previous to that in List XIII second page.

Mr. President : Yes, you can move it.

Shri Brajeshwar Prasad: Mr. President, Sir, there are eight amendments standing in my name. I refer to amendments Nos. 313, 314, 316 and 317, 318, 319, 320 and 323. Sir, I would like to move only one amendment.

I refer to amendment No. 313. Mr. President, Sir, I move:

That for amendment No. 1 of the List of amendments (Vol. 1), the following be substituted:—

“That for the Preamble the following be substituted:—

“WE THE PEOPLE OF INDIA, having resolved to constitute India into a CO-OPERATIVE COMMONWEALTH to establish SOCIALIST ORDER and to secure to all its citizens—

- 1 an adequate means of LIVELIHOOD
2. FREE AND COMPULSORY EDUCATION
3. FREE MEDICAL AID
4. COMPULSORY MILITARY TRAINING

do hereby ordain and establish this Constitution for India”.

Dr. P. S. Deshmukh : What about a camel and motor cycle?

Shri Brajeshwar Prasad: It is for you to suggest those things. Sir, this word secular has not found any place in our Constitution. This is the word on which the greatest stress has been laid by our national leaders. I do submit that this word ought to be incorporated in our Preamble because it will tone-up the morale of the minorities and it will check the spirit of loaferism that is rampant in politics. I have laid stress on another word. I refer to the Word 'Socialist'. I believe that the future of India is in Socialism. I believe in a Socialist order. When I say that I believe in a socialist order. I do not mean that I accept the Marxian interpretation of History. I do not believe in class war nor in the materialist Philosophy which is so widely prevalent among the socialist circles. By socialism I mean an equalitarian social order. Equality of opportunity without equality of income is a mere shibboleth. I believe that in India we have to evolve a new type of socialism consistent with the tradition and history of this land. The theory of materialism is a well-knit dogma. I think that we people in India have not to learn anything from Germany on philosophical speculation.

Now I come to some other words which have found place in the Preamble. There seems to be a confusion of thought. I hold the opinion that the word 'liberty' and 'equality' do not go together. They are incompatibles. They are the enemies of one another, the one can only triumph at the expense of the other. With your kind permission, I would quote a small passage of a few lines from a booklet. I refer to the book entitled "Liberty *versus* equality" by Muriel Jaeger:

"It is becoming more and more widely accepted that ownership is one of those liberties infringe the liberty of others and so must be abolished, or drastically restricted. And at this point what one may call the "paradox of liberty" becomes acute. If every liberty that does, or may do, harm to one's fellow-men were taken away, there would be no liberty left. The abolition or restriction of private wealth implies some kind of public control. Public control means public planning, for the general good is the whole object of taking wealth out of private hands. This is well-worn platitude; but it is the details that interest us—the effect that the application of those platitudes will have upon our lives from day to day, from year to year. and from generation to generation.

"Public planning means that enterprise, labour, distribution must be strictly regulated. It means, therefore that that one's chance to choose one's occupation must be reduced, since the plan cannot possibly be worked unless enough labour is directed into the occupation where it is needed, regardless of whether enough people want to do that kind of work or not."

Sir, I would crave your indulgence for a few minutes.

Mr. President : Are you going to read the Whole book?

Shri Brajeshwar Prasad: No, Sir.

Mr. President : I thought you said you would read one sentence, but at least you have read one paragraph.

Shri Brajeshwar Prasad: I have read a few lines; I wanted to finish one paragraph consisting of 12 lines

I will just urge another point. I hold that liberty and equality are not merely incompatibles but they can be reconciled only in a class less society and here, I would again refer to another paragraph and I would like with your permission to read a few lines:

"As for the final goal, the Marxists, who are so severe with "Utopians", have always been rather pathetically vague. But so far as one can discover, they foreseen a state in which everyone will work cheerfully for the common good, any help himself to whatever he wants from the common stock, which will then be so ample that there will be no danger of any rivalry or clashing of interests. They think that this will be the natural result of a society 'without force and without subordination' and that good social habits will grow of themselves in a classless society, so that special state apparatus will become gradually superfluous. It appears from this that the ultimate Communist idea is complete Liberty combined with complete Equality."

I do not want to place impossible ideals before the nation, Sir, it is only in a classless society that we can achieve a reconciliation of the two, concepts of liberty and equality.

I have suggested that instead of these ideals laid down in the preamble we should have some pragmatic ideals before us. If we succeed in providing an adequate means of livelihood, free and compulsory education, free medical aid and compulsory military training I would think that our efforts have borne fruit. I do not want to place impossible ideals before the nation which we know well that neither in our life-time nor in the life-time of our children or our grand children we will not be able to achieve. I would like to refer to another point before I conclude. I object to the word 'sovereignty' in this Preamble. I hold the opinion that the whole concept of Austinian sovereignty has been exploded. A legal concept must have some relation with real facts. If it is not so, it has got no value.

Sir, it is not right to say that the Government of Nepal is a sovereign State. It has got, the right: it is sovereign and it can declare war against the U.S.A. The Government of the U.S.S.R. is free to liquidate the Communist Party of Russia. We know that both in the external and internal affairs the State is circumscribed by numerous factors. If the Government of Nepal declares war against America or the U.S.S.R. tries to liquidate the Communist Party, we know what the result would be. Therefore, I hold the opinion that we should not place any undue emphasis upon this word "sovereignty". I hold the opinion that this ideal is neither necessary nor desirable because sovereignty leads to war; sovereignty leads to imperialism. (Clapping and interruption).

Mr. President : I hope the honourable Member will take the hint.

Shri Brajeshwar Prasad: I have a right to demand protection from you. I can never be hood-winked in this way.... I will have my say and let honourable Members clap their hands, I will go on speaking and unless you ask me to close my speech, I will go on speaking. I cannot allow, Sir, without raising my voice of protest.....

Shri Mahavir Tyagi: On a point of order, I hope you as the custodian of the rights of Honourable Members will see that Members are not shouted down like that.

Mr. President : There is no attempt at shouting him down. They only want to cheer him down. The honourable Member had better finish.

Shri Brajeshwar Prasad: Sir, I will now deal with only one aspect of the question. The word 'sovereign' has found a place in this Preamble. I am rather thick-skinned. I will never resume my seat. I will speak and then take my seat. I feel that this word 'sovereign' is entirely misplaced. A State consists of individuals. Are individuals sovereign in any sense of the term? If individuals are not sovereign, how can a State which consists of individuals be sovereign. It is a very well-known fact that man has no free will of his own, that he is circumscribed by factors of heredity and environment. Both qualitatively and quantitatively he holds a very insignificant place in the universe. If man is so insignificant, if man is a non entity in the world how can a State which consists of individuals be a sovereign State? Therefore, Sir, I am opposed to this idea of sovereignty.

We are sovereign. We are a sovereign State to the extent it is possible for a modern state to be sovereign. We do not aspire to rise to those Austinian heights because, as I have already stated, it is a frivolous concept, it is a mis-

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chievous concept. The deletion of the word 'sovereign will not in any way deter us from exercising the functions of sovereignty which are vested in the Government of India. It will not detract one iota of sovereignty. But by the retention of the word 'sovereign', we are placing a false ideal, a mischievous ideal before the nation. Therefore, I am opposed to this Preamble. Let us have some pragmatic life-ideals which we may be capable of achieving in our own life-time and in the life-time of our children.

Mr. President : Does any one wish to say anything about the amendment? I shall put this amendment to vote.

The question is:

That the amendment No. 1 of the List of Amendments (Vol. 1), the following be substituted:—

That for the Preamble, the following be substituted:—

“WE THE PEOPLE OF INDIA—having resolved to constitute India into a SECULAR CO-OPERATIVE COMMONWEALTH to establish SOCIALIST ORDER and to secure to all its citizens—

1. an adequate means of LIVELIHOOD
2. FREE AND COMPULSORY EDUCATION
3. FREE MEDICAL AID
4. COMPULSORY MILITARY TRAINING

do hereby ordain and establish this Constitution for India”

The amendment was negatived.

Mr. President : We shall take up the amendment of which notice has been given by Shrimati Purnima Banerji, amendment No. 452.

Shri H. V. Kamath: On a point of order, may I submit, Sir, that I have not moved my amendment No 2? This is with reference to my amendment. Therefore, it cannot arise.

Shri Mahavir Tyagi: On the point of order, may I submit, Sir.

Mr. President : The point of order has been raised. I am considering it. Let me find out what he has moved and what he has not moved.

Shri Mahavir Tyagi: On the point of order raised by my honorable Friend Mr. Kamath. I beg to submit that on previous occasions, such amendments have been permitted in the House. When there was no occasion to give amendments because they were time-barred, many of us took the opportunity of just hinging our amendments or connecting them with previous ones. If those Members did not move, it is not the fault of the other honourable Members who have come with their ideas and their amendments. Because there is no other chance of making the amendments relevant, with in the time, the only course left to them was, just to relate their amendments to previous ones already given notice of. I would therefore submit, Sir, that at this fag end of the debate, you might kindly not give a ruling which will debar the moving of this amendment.

Mr. Naziruddin Ahmed: May I point out Sir, that this is not an amendment to another amendment, in which case it would have been barred by the rules, but an amendment “with reference to” some other amendment. Therefore, the amendment is in order.

Mr. President : I have as a matter of fact allowed amendments of this nature to be moved. So, I cannot rule this out.

Shrimati Purnima Banerji: Sir, I move:

“That in amendment No. 2 of the List of Amendments (Volume 1), for the first paragraph in the proposed preamble, the following be substituted:—

‘We on behalf of the people of India from whom is derived all power and authority of the independent India.....

With your permission, Sir, I would like to drop the word “sovereign” here.

“its constituent parts and organs of Government, having solemnly resolved to constitute India into a Sovereign Democratic Republic and to secure to all its citizens:—

Sir, my honourable Friend Mr. Tyagi has given point to my amendment and further strengthened my hands. I feel that the Preamble that we are now dealing with forms one of the most important parts of the Constitution and to persons like us who are not of a legalistic bent of mind, it stands as a charter of our freedom and as a measure of our success or our failure. It lays down the goal to which we are going and therefore at this moment if members of this House will allow us to express what we feel on this subject with a little more patience, then, I personally will be very grateful.

Sir, I feel that the Constitution which we have drawn up has invested the President and Parliament with wide powers. At this moment, I do not think we should be content with considering the masses of our people as the sovereign authority from whom all power is derived and in whom all sovereign authority rests by merely believing that because they once go to the polls once in five years their sovereignty is secured. Therefore, I feel that, in the Preamble, mention of that sovereignty should be made. I have not gone beyond what the House has already passed. The wording which I have quoted here is taken almost verbatim from the Objectives Resolution which was first passed in this House in January 1947. As I said before, the three parts of the Constitution or rather three incidents in the Constitution, one, the Objectives Resolution, second the statement of Objectives of State policy and the Preamble are supposed not to have any legal binding upon the Constitution. But they, in fact, constitute the very life breath of the Constitution which we have here framed. I do not wish to take more of your time. I would strengthen my argument with the speech quoted by my honourable Friend Mr. Tyagi from the speech made by Dr. Ambedkar when he moved the Preamble. At that moment, I was not present in the House. But that has borne my contention out that the sovereignty of the people should be mentioned somewhere in the Constitution. With these words, I move my amendment.

Shri Mahavir Tyagi: Sir, In supporting the amendment of my honourable Friend, Shrimati Banerji, I have to remind the House of the proceedings of 15th November 1948, when a similar amendment was moved by me. It was worded like this that the sovereignty will vest in the whole body of people. It was discussed thread-bare and I was assured that the article to which I was moving that amendment was not the proper place for that amendment and I was promised that this amendment would be considered when the Preamble was discussed. Now is the occasion when I beg to remind the House of the promise the Chairman of the Drafting Committee gave me. I am keen that the residence of the sovereignty should be defined, I am more keen about it because up till today the sovereignty vests in His Majesty the King of England. There is all Englishman in whom we have vested the sovereignty for a century past. So if we do not say in so many words, as to where the sovereignty would vest in future it will go on vesting in an

[Shri Mahavir Tyagi]

Englishman. We want to break it away from him. Therefore we must definitely say that there is no more sovereignty attached to the King of England.

Then, I also do not want to let remain any doubt or danger of any Government, this or future, to bargain or barter away the sovereignty of the Country in the name of Commonwealth or common brotherhood or common citizenship or whatever it be. So the sovereignty must be vested in so many words in the people as a whole. In China in their Constitution they have put it that the sovereignty vests in the whole people of China. Whether the Communists take China or not, the people will remain. People will not be animals if they become communists or if they adopt any party label. People will remain in India as well and the sovereignty will vest in the people of India. It must be defined so that the Government might not misuse it. It does not vest even in the Government. Government only represents the people. Because Dr. Ambedkar has agreed to put it in the Constitution, I do not want to dilate upon it and I hope he will kindly accommodate these words and make it clear once for all that the sovereignty vest in the people and not in any foreigner as it does today, nor in the state even though it has the title of being a "sovereign state".

Acharya J. B. Kripalani: Mr. President, Sir, it was not my intention to speak but some friends, wanted that at this last moment when practically we are Finishing Our Constitution I should speak a few words. Some of my friends said that I began, by a formal speech, the proceedings of this House and that I should, at this time of its Second Reading which is for all practical purposes the final reading, finish the proceedings.

Sir, you, like a good host, have reserved the choicest wine for the last. This Preamble should have come in the beginning of the Constitution even as it is given in the beginning of the Constitution. There was a reason for that because it would have been before us in every detailed Provision that we made in the Constitution. It would have cautioned us that we were not deviating from the basic principles which we have laid down in the Preamble. As I have sat in this House from day to day, I have seen that very often we have deviated from the basic principle laid down in the preamble only recently we want against the great principle of democracy. This unfortunate land is divided into many castes and economic classes. There are innumerable divisions. I think it was the first time in the history of World's Constitutions that a new caste of administrators was created, and it was placed in a privileged position. It was placed in the position where even the chosen representatives of the people could not touch its special privileges as against the people. This, I submit, was going against the first basic principles of our Constitution.

Sir, I want, at this solemn hour to remind the House that what we have stated in this Preamble are not legal and political principles only. They are also great moral and spiritual principles and if I may say so, they are mystic principles. In fact these were not first legal and constitutional principles, but they were really spiritual and moral principles. If we look at history, we shall find that because the lawyers and politician made their principles into legal and constitutional form that their life and vitality was lost and is being lost even today. Take democracy. What is it? It implies the equality of man, it implies fraternity. Above all it implies the great principle of nonviolence. How can

there be democracy where there is violence? Even the ordinary definition of democracy is that instead of breaking heads, we count heads. This non-violence then there is at the root of democracy. And I submit that the principle of non-violence, is a moral principle. It is a spiritual principle. It is a mystic principle. It is a principle which says that life is one, that you cannot divide it, that it is the same pulsating through us all. As the Bible puts it, "we are one of another," as Vendanta puts it, that all this is One. If we want to use democracy as only a legal, constitutional and formal device, I submit, we shall fail. As we have put democracy at the basis of your Constitution, I wish Sir, that the whole country should understand the moral, the spiritual and the mystic implication of the word "democracy". If we have not done that, we shall fail as they have failed in other countries. Democracy will be made into autocracy and it will be made into imperialism, and it will be made into fascism. But as a moral principle, it must be lived in life. If it is not lived in life, and the whole of it in all its departments, it becomes only a formal and a legal principle. We have got to see that we live this democracy in our life. It would be inconsistent with democracy to have it only in the legal and political field. Politically, we are a democratic people but economically we are divided into such classes that that the barriers cannot be crossed. If we have got to be democratic we have got to be economically so too.

I also say democracy is inconsistent with caste system. That is social aristocracy. We must do away with castes and classes Otherwise we cannot swear by democracy. And we must remember that economic democracy does not merely mean that there should be no classes, that there should be no rich and poor; but the State itself should live in a manner that is consistent with the life of the poor, if people happen to be poor. It is not economic equality if for pomp and pageant, we spend thousands and lakhs of rupees. It is again not democracy if at every corner of the Government House human beings are made to stand statue like and unmoving. Such things are against the dignity of the individuals. If we establish democracy, we have to establish it in the whole of our life, in all its departments, whether it be in administration, or in society or in the economic field. This we must know and understand.

Then we have said that we will have liberty of thought, expression, belief, faith and worship. We must understand the implications of this also. All these freedoms can only be guaranteed on the basis of non-violence. If there is violence, you cannot have liberty of thought, you cannot have liberty of expression, you cannot have liberty of faith or liberty of worship. And this non-violence should go so far as to make us not only what is popularly called tolerant of other people, but to a certain extent, we should accept their ideas as good for them. Mere tolerance will not carry us far. Many people are merely tolerant. Why? Because they are indifferent. They say "this man's worship is different from ours. It is wrong. The man is sure to go to hell"; but let him; it is none of my business." That is not tolerance. That is intolerance. If violence is not used physically, it is because it is not possible always to use violence, but there is mental violence. We have to respect each other's faith. We have to respect it as having an element of truth. No religion in the world is perfect, and yet there is no faith without some element of God's truth

Then we have said that there should be equality of status and opportunity. This implies that in our public affairs, we should be absolutely above board, that there should be no nepotism, there should be no favouritism, there should be no 'mine' and 'not mine'. This can be done. We can give equality of opportunity and equality of status only when what is considered as "Ours" is put behind and what is considered as "Not Ours" is put before. Unless we do these things, we will not be able to fulfil the aims of our Constitution.

[Acharya J. B. Kripalani]

Again I come to the great doctrine of fraternity which is allied with democracy. It means that we are all sons of the same God, as the religious would say but as the mystic would say, that there is one life pulsating through us all or as the Bible says, "We are one of another." There can be no fraternity without this. So I want this House to remember that what we have enunciated are not merely legal, constitutional and formal principles, but moral principles; and moral principles have got to be lived in life. They have to be lived whether it is private life or it is public life, whether it is commercial life, political life or the life of an administrator. They have to be lived throughout. These things, we have to remember if our Constitution is to succeed.

Sir, one word more and I have done. I think the amendment proposed by Shrimati Purnima Banerji should be accepted, because it really describes the true position and as such it should be enunciated in the Preamble. On formal occasion, on great occasions, on important occasions, we have to remind our selves that we are here as the representatives of the people. More than that. We have to remind ourselves that we are the servants of the people. We often forget that we are here in a representative capacity. We, often forget that we are the servants of the people. It always happens that our language, because of our thoughts and actions, gives little countenance to this basic idea. A Minister says "Our Government" not "The People's Government." The Prime Minister says "My Government" not the "People's Government". Therefore, on this solemn occasion, it is necessary to lay down clearly and distinctly that sovereignty resides in and flows from the people. (*Cheers*). I hope therefore, this House will carry Shrimati Purnima Banerji's amendment.

Mr. President : Are there some other people who want to speak ?

Mr. Naziruddin Ahmad: Mr. President, Sir, the eloquent words of Acharya Kripalani require one explanation. He seems to think—and I speak with great respect—that the success of a democracy depends upon the introduction of some sweet and palatable words in the Constitution, I however, submit that the success of a democracy depends on how it is practically worked. It has nothing to do whatever with what we may state in the Preamble or in the Constitution. On the actual working of democracy its success depends.

Honourable Members: Closure, closure.

Mr. President : I take it that closure is accepted. I shall now ask Dr. Ambedkar to reply

The Honourable Dr. B. R. Ambedkar: Mr. President, Sir, the point in the amendment which makes it, or is supposed to make it, different from the Preamble drafted by the Drafting Committee lies in the addition of the words "from whom is derived all power and authority". The question therefore is whether the Preamble as drafted, conveys any other meaning than what is the general intention of the House, *viz.* that this Constitution should emanate from the people and should recognise that the sovereignty to make this Constitution vests in the people. I do not think that there is any other matter that is a matter of dispute. My contention is that what is suggested in this amendment is already contained in the draft Preamble.

Maulana Hasrat Mohani : Then why dont' you accept it?

The Honourable Dr. B. R. Ambedkar : I propose to show now, by a detailed examination, that my contention is true.

Sir, this amendment if one were to analyse it, falls into three distinct parts. There is one part which is declaratory. The second part is descriptive. The third part is objective and obligatory if I may say so. Now, the declaratory part consists of the following phrase: 'We the people of India, in our Constituent Assembly, day, this month..... do hereby adopt, enact and give to ourselves constitution.' Those Members of the House who are worried as to whether Preamble does or does not state that this Constitution and the power and authority and sovereignty to make this Constitution vest in the people should separate the other parts of the amendment from the part which I have read out, namely the opening words 'We the people of India in our Constituent Assembly, this day, do hereby adopt, enact and give to ourselves this Constitution' Reading it in that fashion.....

Shri Mahavir Tyagi: Where do the people come in? It is the Constituent Assembly Members that come in.

The Honourable Dr. B. R. Ambedkar : That is a different matter. I am for the moment discussing this narrow point: Does this Constitution say or does this Constitution not say that the Constitution is ordained, adopted and enacted by the people. I think anybody who reads its plain language, not dissociating it from the other parts, namely the descriptive and the objective cannot have any doubt that that is what the Preamble means.

Now my friend Mr. Tyagi said that this Constitution is being passed by a body of people who have been elected on a narrow franchise. It is quite true that it is not a Constituent Assembly in the sense that it includes every adult male and female in this country. But if my Friend Mr. Tyagi wants that this Constitution should not become operative unless it has been referred to the people in the form of a referendum, that is quite a different question which has nothing to do with the point which we are debating whether this Constitution Should have validity if it was passed by this Constituent Assembly or whether it will have validity only when it is passed on a referendum. That is quite a different matter altogether. It has nothing to do with the point under debate.

The point under debate is this: Does this Constitution or does it not acknowledge, recognise and proclaim that it emanates from the people? I say it does.

I would like honourable Members to consider also the Preamble of the Constitution of the United States. I shall read a portion of it. It says: "we the people of the United States"—I am not reading the other parts—"We the people of the United States do ordain and establish this Constitution for the United States of America." As most Members know, that Constitution was drafted by a very small body. I forget now the exact details and the number of the States that were represented in that small body which met at Philadelphia to draw up the Constitution. (Honourable Members There were 13 States). There were 13 States. Therefore, if the representatives of 13 States assembled in a small conference in Philadelphia could pass a Constitution and say that what they did was in the name of the people, on their authority, basing on it their sovereignty. I personally myself, do not understand unless a man was an absolute pedant, that a body of people 292 in number, representing this vast continent, in their representative capacity, could not say that they are acting in the name of the people of this country. (*Hear, hear*).

Maulana Hasrat Mohani: I do not think. It is only a community.

The Honourable Dr. B. R. Ambedkar : That is a different matter, Maulana. I cannot deal with that. Therefore, so far as that contention is concerned,

[The Honourable Dr. B. R. Ambedkar]

I submit that there need be no ground for any kind of fear or apprehension. No person in this House desires that there should be anything in this Constitution which has the remotest semblance of its having been derived from the sovereignty of the British Parliament. Nobody has the slightest desire for that. In fact we wish to delete every vestige of the sovereignty of the British Parliament such as it existed before the operation of this Constitution. There is no difference of opinion between any Member of this House and any Member of the Drafting Committee so far as that is concerned.

Some Members, I suppose, have a certain amount of fear or apprehension that, on account of the fact that earlier this year the Constituent Assembly joined in making a declaration that this country will be associated with the British Commonwealth, that association has in some way derogated from the sovereignty of the people. Sir, I do not think that that is a right view to take. Every independent country must have some kind of a treaty with some other country. Because one sovereign country makes a treaty with another sovereign country, that country does not become less sovereign on that account. (*Interruption*). I am taking the worst example I know that some people have that sort of fear. (*Interruption*).

Shrimati Purnima Banerji: May I, Sir.....

Mr. President : Let Dr. Ambedkar proceed. He has not insinuated anything.

The Honourable Dr. B. R. Ambedkar : I say that this Preamble embodies what is the desire of every Member of the House that this Constitution should have its root, its authority, its sovereignty, from the people. That it has.

Therefore I am not prepared to accept the amendment. I do not want to say anything about the text of the amendment. Probably the amendment is somewhat worded, if I may say so with all respect, in a form which would not fit in the Preamble as we have drafted, and therefore on both these grounds I think there is no justification for altering the language which has been used by the Drafting Committee.

Mr. President : The question is:

“That in amendment No. 2 of the List of Amendments (Volume 1), for the first paragraph in the proposed Preamble, the following be substituted:—

‘We, on behalf of the people of India from whom is derived all power and authority of the Independent India, its constituent parts and organs of government, having solemnly resolved to constitute India into a Sovereign Democratic Republic and to secure to all its citizens.’ ”

The amendment was negatived.

Mr. President : There is no other amendment. The Preamble, as it is, is now open to discussion, if any Member wishes to say anything.

Honourable Members: The question may now be put.

Mr. President : If nobody is willing to speak, I shall put the Preamble to the vote. The question is:

“That the Preamble stand part of the Constitution”.

The motion was adopted

The preamble was added to the Constitution.

Mr. President : We are now coming to the close of this session. Before I actually adjourn the House, there are certain things which have to be settled

at this stage. One of the questions which have to be decided is the next session for the Third Reading of the Constitution, and on previous occasions the House gave me permission to all it at any time I thought necessary, and this time also I suppose the House would give me that permission, but I would ask Mr. Satyanarayan Sinha to move a formal resolution to that effect.

The Honourable Shri Satyanarayan Sinha: Sir I move:

“That the Assembly do adjourn until such day in November 1949 as the President may fix”.

Mr. President : The question is:

“That the Assembly do adjourn until such day in November 1949 as the President may fix”.

The motion was adopted.

Mr. President : I think we have done with all the amendments, of which we had notice, and I need not say anything more about them. Now that we have concluded the Second Reading of the Constitution, by virtue of the powers vested in me under Rule 38-R as recently passed by this House, I shall refer the Draft Constitution with the amendments to the Drafting Committee in order to carry out such redraft of the articles, revision of punctuations, revision and completion of the marginal notes, and for recommending such formal or consequential or necessary amendments of the Constitution as may be required. This has to be done to complete the work and I do that by virtue of the authority which you have given me with this, we now adjourn till such date as I may announce.

The Constituent Assembly then adjourned to a date in November 1949 to be fixed by the President.

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Volume XI



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**14-11-1949
to
26-11-1949**

CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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THE CONSTITUENT ASSEMBLY OF INDIA

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Deputy Secretary:

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Marshal:

SUBEDAR MAJOR HARBANS LAL JAIDKA.

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CONSTITUENT ASSEMBLY OF INDIA

Monday, the 14th November 1949

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.

TAKING THE PLEDGE AND SIGNING THE REGISTER

Mr. President : I understand that there are two Members who have to take the Pledge and sign the Register.

The following Member took the pledge and signed the register:—

Shri M. R. Masani (Bombay General).

DRAFT CONSTITUTION

Mr. President : We have now to take up the consideration of the Draft Constitution.

Shri R. K. Sidhwa (C.P. & Berar : General) : Mr. President I wish to draw your attention to the Resolution I have given notice of in connection with the sending of a message by the Constituent Assembly to the people of Indonesia for their having achieved their freedom after a great struggle. I think the proper body to send such a message is the Constituent Assembly of India who have achieved freedom and are preparing the Constitution. The Indonesian people are also preparing their Constitution. Sir, if my Resolution is not taken up here, I request you as President to send a telegram of congratulation and felicitation.

Mr. President : I propose to place the notice of that Resolution before a meeting of the Steering Committee and take such steps as we are advised by that Committee.

We have now to take up the consideration of the Report of the Drafting Committee together with the amendments made by the Drafting Committee and other amendments of which we have received notice. I propose to explain the procedure which I wish to follow in this connection. After the motion for the consideration of the Report has been passed, the amendments will be taken up. Those amendments of which notice has been given by the Drafting Committee will be taken as moved and there will be no formal motion with regard to the amendments included in the Report of the Drafting Committee.

As regards the amendments of the Drafting Committee, they are of two kinds. Many amendments have been incorporated in the Report and printed in italics in the copy of the Constitution which is now in the hands of the honourable Members. There are certain other amendments of which we have received notice from the Drafting Committee but which are not included in the Report or printed in the Draft Constitution. So far as those amendments are concerned which are included in the Report and indicated in italics, the Members have had an opportunity to send in amendments and they have given notice of amendments to them. But so far as these new amendments of which the Drafting Committee has given notice now are concerned, the Members have had no notice and no opportunity of giving notice of amendments. I would allow amendments to those amendments which are now included in the Second List of Amendments till we start work tomorrow morning. Honourable Members will thus have time to consider these new amendments and give notice of amendments, if they wish, till tomorrow morning. As regards the procedure to be followed in considering the amendments, under the rules which were adopted in the last session, I think no amendment which does not arise out of any

[Mr. President]

amendment which is moved on behalf of the Drafting Committee will be in order. So I propose not to take those amendments unless in the case of any particular amendment I find that there is any special reason to make an exception. The rules have given me that discretion and I shall consider any particular amendment which does not come under the rules but which I consider to be reasonable and necessary and permit it to be moved. At present I must say that I do not feel it advisable to admit any of those amendments which are outside the rules. But I am open to consider the matter further and if any honourable Member draws my attention—not in the House but in writing—to any particular amendments to which he attaches special importance, I shall consider that amendment specially and allow that to be moved or not as I deem fit.

When an amendment to an amendment is moved, I do not know whether Members would like to discuss each separately, but then we have a limited time at our disposal and all this process of disposing of all the amendments must be finished by one o'clock day after tomorrow. Under the rules I could give only two days for this business, but I have stretched the point in favour of the Members by fixing the time up to one o'clock on Wednesday. I have done this because I feel that the previous consideration of the motion might take a little time today and it would not be fair to the Members to give them less than two days for considering all the amendments. Therefore I would suggest that if any Member wishes to speak about any amendment of his own, he will confine his remarks to the barest minimum possible, so that we may have more time for other Members.

I hope all the amendments to the amendments of the Drafting Committee, except those contained in List II, will be moved in the course of this day and tomorrow we may take up the amendments to List II of Amendments. We may have a discussion of all the amendments tomorrow. I must put them all to vote day after tomorrow, say by about twelve of the clock, and finish the voting by one of the clock day after tomorrow. This is the procedure which I propose to follow. I trust this will give an opportunity for all important amendments to be discussed and also for expediting the work.

Shri R. K. Sidhwa : I want to know whether we will have two sittings today.

Mr. President : We shall sit every day from tomorrow from 10 o'clock to 1 o'clock and from 3 o'clock to 5 o'clock.

Shri R. K. Sidhwa : Why not today also.

Mr. President : Yes, today also.

Shri H. V. Kamath (C. P. & Berar : General) : With regard to the time fixed for the consideration of the amendments to the Draft Constitution as revised, under the rules adopted in the Assembly last time you have powers to relax or suspend any of the rules.

Mr. President : I am not inclined to extend the time beyond 1 o'clock day after tomorrow. Within that time I shall be prepared to relax any of the rules which I consider need relaxation.

Shri Mahavir Tyagi (United Provinces : General) : Sir, are you going to take the amendments in italics article by article ? If you do, it will be difficult for us to finish the work within the prescribed time. Moreover, in certain cases, the changes are such that they are absolutely new and which we have not discussed before. Some changes have been introduced which were not discussed in the House at all. In such cases Members may like to oppose those amendments.

Mr. President : Members may depend upon my discretion to decide such cases.

Mr. Naziruddin Ahmad (West Bengal : Muslim) : I have a point of order.

Pandit Lakshmi Kanta Maitra (West Bengal : General) : How can a point of order be raised on the observations of the Chair ?

Mr. Naziruddin Ahmad : I have nothing to say against the observations of the Chair.

Shri R. K. Sidhwa : How can a point of order be raised when there is nothing before the House ?

Mr. President : I think the honourable Member only wants to make some observations as some other Members have done.

Mr. Naziruddin Ahmad : I do not want to obstruct the proceedings. Sir, you have kindly observed that the amendments put before the House today during this session should be relevant to the amendments made by the Drafting Committee. That I submit, should apply not only to out amendments but also to the amendments proposed by the Drafting Committee. If any amendment of ours is outside the scope of being relevant to the amendments already suggested by the Drafting Committee, it should go. I quite agree; but along with it, I think, must also go the amendments proposed by the Drafting Committee which were circulated last night. Amendments to amendments again must be governed by the same rules. Our rules do not make any distinction between further amendments to be moved by the Drafting Committee and the amendments to be moved by the Members. So they should either sink or swim together. I ask you whether you would consider the later amendments suggested by the Drafting Committee on the same basis as our amendments.

So far as the amendments suggested by the Drafting Committee in the revised draft are concerned, in some cases the changes have not been indicated in the text. In some cases they have been shown in italics, In some cases important changes have not been indicated at all. So, it would be extremely difficult for you and for the office to find out whether our amendments are relevant amendments to the amendments made. This is a very difficult matter. I ask you to consider all these.

Then I should like to make a suggestion that amendments which may be strictly outside the scope of the rules may be considered by the draftsmen. I would like the draftsmen to consider them and in case they are agreeable, I submit that those amendments, although they are strictly outside the rules, may be allowed to be moved. I submit that they may improve the text and they should not be allowed to be ruled out on mere technical grounds. I think these things should be carefully considered.

Mr. President : As regards the first point raised by Mr. Naziruddin Ahmad with regard to the amendments of which notice has been given by the Drafting Committee now and which are contained in List II, I think the discretion given to me under the rules is intended to cover such cases and I shall use my discretion in regard to those amendments and also in regard to other amendments too, but naturally the amendments of which notice has been given by the Drafting Committee have a certain value which does not attach to every amendment of which notice has been given by every private member. Subject to that, I shall consider those amendments also and use my discretion. If I find that any amendment really does not arise, I will rule that out.

Mr. Naziruddin Ahmad : What about my other point, Sir, that the draftsmen should consider all formal amendments and if they are acceptable to them they should be allowed ?

Mr. President : As regards those amendments, I expect that the Drafting Committee has been considering all these amendments and if they have not done so up till now, they will do that. It is for that reason that I do not wish to put any amendment to the vote now but put them to the vote only day after tomorrow so that in the meantime the Drafting Committee may have time to consider those amendments on their merits. If it is inclined to accept any of them, they may be accepted, or if the Drafting Committee is inclined to accept any of the amendments which do not come under the first class of amendments but are amendments to amendments, they can do so. I shall take up on Wednesday all these amendments at one time. For this reason I think I would not put to the vote any amendment at this stage, in order to give time to everybody to consider the amendments so that we may have the best consideration given to each amendment.

Now, as regards the time for moving any amendment, I would not like to give more than five minutes. If on the other hand, as has been pointed out by Mr. Mahavir Tyagi, there is any amendment which is a substantial amendment and which goes beyond the decision of the Constituent Assembly in its previous session, probably I might give a little more time for discussion. I might allow some speeches on those amendments.

The Honourable Shri K. Santhanam (Madras : General) : Members should not make speeches on merely formal amendments.

Mr. President : I hope that Members will not insist on delivering speeches because they will remember, as I have already said, that we have got to finish by 1 o'clock day after tomorrow. If they insist on making speeches on amendments which are of an inconsequential or unnecessary nature, they will be only taking up the time of the House which should actually be reserved for discussion of the more important ones.

Pandit Thakur Das Bhargava (East Punjab : General) : Sir, the amendments of the Drafting Committee leave one rather cold in respect of some matters. The Drafting Committee has gone beyond its powers in putting forth amendments which are against the considered verdict of the House. The House defeated some amendments but those amendments have been re-incorporated. My humble submission is that in the third reading it is beyond the powers of the Drafting Committee so to arrange matters that the previous amendments which were carried by the House are tampered with. My humble submission is that those amendments which were defeated before and which were the subject matter of discussion in the House should not be touched in the third reading at all.

The Drafting Committee were only allowed to make formal and consequential amendments and such amendments which were absolutely necessary. Necessary amendment does not mean that they sit as a revising body over the considered verdict of the House, and therefore my humble submission is that so far as these amendments are concerned, they ought to be ruled out as inadmissible. When the amendments come, it must be decided on merits whether those amendments should be allowed or not.

Mr. President : As I have said, I shall consider each amendment on its merits and Mr. Thakur Das Bhargava has not said anything which requires any further reconsideration. What he has said is covered by what I have said already.

Shri H V. Kamath : Is Wednesday 1 o'clock absolutely final ?

Mr. President : Yes, it is final.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Mr. President, Sir. I have to present the report of the Drafting Committee together with the Draft Constitution of India as revised by the Committee under rule 38-R or the Constituent Assembly rules. Sir, I move—

“That the amendments recommended by the Drafting Committee in the Draft Constitution of India be taken into consideration.”

Sir, I do not propose to make any very long statement on the report or on the recommendations made by the Drafting Committee for the purpose of revising or altering the articles as they were passed at the last session of this Assembly. The only thing that I wish to say is that I would not like to apologise to the House for the long list of corrigenda which has been placed before the House or the supplementary list of amendments included in List II. In my judgment it would have been much better if the Drafting Committee had been able to avoid this long list of corrigenda and the supplementary list of amendments contained in List II, but the House will realise the stress of time under which the Drafting Committee had been working. It is within the knowledge of all the Members of the House that the last session of the Constituent Assembly ended on the 17th of October. Today is the 14th of November. Obviously, there was not even one full month available for the Drafting Committee to carry out this huge task of examining not less than 395 articles which are now part of the Constitution. As I said, the Drafting Committee had not even one month, but that even is not a correct statement, because according to Rule 38-R and other rules, the Drafting Committee was required to circulate the Draft Constitution as revised by them five days before this session of the House. As a matter of fact the Constitution was circulated on the 6th of November, practically eight days before the commencement of this session. Consequently the time available for the Drafting Committee was shorter by eight days. Again, it must be taken into consideration that in order to enable the Drafting Committee to send out the Draft Constitution in time, they had to hand over the draft they had prepared to the printer some days in advance to be able to obtain the copies some time before they were actually despatched. The draft was handed over to the printer on the 4th of November. It will be seen that the printer had, only one day practically to carry out the alterations and the amendments suggested by the Drafting Committee. It is impossible either for the printer or for the Drafting Committee or the gentleman in charge of proof corrections to produce a correct copy of such a huge document containing 395 articles within one day.

That, in my judgment, is a sufficient justification for the long corrigenda which the Drafting Committee had to issue in order to draw attention to the omissions and the mistakes which had been left uncorrected in the copy as was presented to them by the printer on the 5th. Deducting all these days, it will be noticed that the Drafting Committee had barely ten days left to them to carry out this huge task. It is this shortness of time, practically ten days, which in my judgment justifies the issue of the second list of amendment now embodied in List II. If the Drafting Committee had a longer time to consider this matter they would have been undoubtedly in a position to avoid either the issue of the corrigenda or the Supplementary List of Amendments, and I hope that the House will forgive such trouble as is likely to be caused to them by having to refer to the corrigenda and to the Second List of Amendments for which the Drafting Committee is responsible.

Sir, it is unnecessary for me to discuss at this stage the nature of the amendments and changes proposed by the Drafting Committee in the Draft Constitution. The nature of the changes have been indicated in paragraph 2 of the Report. It will be seen that there are really three classes of changes which the Drafting Committee has made. The first change is merely renumbering of articles, clauses, sub-clauses and the revision of punctuation. This has been done largely because it was felt that the articles as they emerge from the last session of the Constituent Assembly were scattered in different places and could not be grouped together under one head of subject-matter. It was therefore held by the Drafting Committee that in order to give the reader and the

[The Honourable Dr. B. R. Ambedkar]

Members of the House a complete idea as to what the articles relating to any particular subject-matter are, it was necessary to transpose certain articles from one Part to another Part, from one Chapter to another Chapter so that they may be conveniently ground together and assembled for a better understanding and a better presentation of the subject-matter of the Constitution.

The second set of changes as are described in the report are purely formal and consequential, such as the omission of the words "of this Constitution" which occurs in the draft articles at various places. Sometimes capital letters had been printed in small type and that correction had to be made. Other alterations such as reference to Ruler and Rajpramukh had to be made because these changes were made towards the end when we were discussing the clauses relating to definition. The other change may be compendiously called 'necessary alterations.' Now those necessary alterations fall into two classes, alterations which do not involve a substantial change in the article itself. These are alterations which are necessary because it was found that in terms of the language used when the articles were passed in the last session, the meaning of some articles was not clear, or there was some lacuna left which had to be made good. That, the Drafting Committee has endeavored to do without making any substantial change in the content of the articles affected by those changes. There are, however, other articles where also necessary changes have been made, but those necessary changes are changes which to some extent involve substantial change. The Drafting Committee felt that it was necessary to make these changes although they were substantial, because if much substantial changes were not made there would remain in the article as passed in the last session various defects and various omissions which it was undesirable to allow to continue, and the Drafting Committee has therefore taken upon itself the responsibility of suggesting such changes which are referred to in sub-clause (d) of paragraph 2, and I hope that this House will find it agreeable to accept those changes. As to the substantial alterations that have been made, in regard to some of them sufficient explanation has been given in paragraph 4 and I need not repeat what has been said in the report in justification of those changes.

Sir, I do not think it is necessary for me to add anything to the report of the Drafting Committee and I hope that the House will be able to accept the report as well as the changes recommended by the Drafting Committee both in the report as well as in List II which has already been circulated to the Members of the House.

Amendments of Articles

Mr. President : Dr. Ambedkar has presented the report and the motion now before the House is that the amendments recommended by the Drafting Committee, and the Draft Constitution be taken into consideration

Shri H. V. Kamath : I have got an amendment, Sir.

Mr. President : I think it is only a verbal amendment.

Shri H. V. Kamath : This is with reference to Rule 38-R and I shall take only half a minute.

Mr. President : I shall be looking at the clock; take half a minute.

Shri H. V. Kamath : Sir, I shall not read the amendment* to the House. While moving this amendment. I would only endorse the remarks made by my

*That in the motion, for the words "the amendments recommended by the Drafting Committee in the Draft Constitution of India," the words "the amendments to the Draft Constitution of India, as recommended by the Drafting Committee under sub-rule (1) of Rule 38-R of the Constitutional Assembly Rules," be substituted.

honourable Friend Pandit Thakur Das Bhargava and state before the House that so far as the amendments suggested by the Drafting Committee are concerned, they have more or less acted like, may I say, chartered liberties. I would therefore request you, Sir, to be so good as to exercise your discretion generously so far as the amendments suggested by us other than to those recommended by the Drafting Committee are concerned. That is my only submission.

Mr. President : You have not spoken anything about your amendment to this motion. Well

Mr. Naziruddin Ahmad : May I know, Sir, whether the amendments include also the huge number of corrigenda and whether they have also to be read as part of the Constitution?

Mr. President : Corrigenda are corrigenda and they are included.

Since Mr. Kamath has insisted upon moving his amendment, I would put his amendment first to the vote.

Shri H. V. Kamath : Since it is more or less of a drafting nature, I do not press it.

Mr. President : I put the motion moved by Dr. Ambedkar .

The question is :

“That the amendments recommended by the Drafting Committee in the Draft Constitution of India be taken into consideration.”

The motion was adopted.

Mr. President : We shall now take up the amendments. Preamble. There is no amendment by the Drafting Committee to the Preamble and I cannot take up any amendments to the Preamble. Then, we go to article 1. There is an amendment by Mr. Naziruddin Ahmad and by Mr. Kamath*. Mr. Kamath, do you wish to move and do you require to make any speech ?

Mr. Naziruddin Ahmad : Sir, so far as my punctuation amendments are concerned, I should rather leave them all to the draftsmen.

Mr. President : (*To Shri H. V. Kamath*) It is only a punctuation here also. You will remember that you are taking the time of more important amendments.

Shri H. V. Kamath : I should like to know whether the Drafting Committee is accepting it.

Mr. President : Nobody is accepting or rejecting any amendment.

Shri H. V. Kamath : Sir, the Draft as passed by the House reads, “India, that is, Bharat”. The revised draft presented to the House says, “India, that is Bharat”. That I do not think is what was intended by the House when we accepted article 1. What was meant was, India, that is to say, Bharat. That is why two commas were inserted and the phrase was interposed. It does not mean, “India, that is Bharat,”. This is wrong English, so far as the meaning intended is concerned. I think the original was perfectly correct and it was absolutely wrong on the part of the Drafting Committee to change the wording.

Mr. Naziruddin Ahmad : Sir, I should rather suggest that some of my formal amendments may be put to the draftsmen and if they agree to accept, shall move them; otherwise, I am not moving.

Mr. President : Let them consider and if they are inclined to accept, they will accept them even without being moved.

*That in clause (1) of article 1, after the words ‘that is’ a comma be inserted and the comma after the word “Bharat” be deleted.

[Mr. President]

We now pass on to article 5. There is no amendment by the Drafting Committee and these amendments do not arise.

Shri B. Das (Orissa : General) : I am not moving the amendment. (Amendment No. 15).

Mr. President : It is covered by article 9.

Article 13 : Sri Raj Bahadur, amendment No. 33.

Shri Raj Bahadur : (United State of Matsya) : Sir, I move:

“That in sub-clause (a) of clause (3) of article 13.

- (i) after the word ‘having’ the words ‘the force of law’ be inserted;
- (ii) after the word ‘India’ the words ‘or any part thereof’ be inserted; and
- (iii) the words ‘the force of law’ be deleted.’

It is obviously for the purpose of making the object of the article clearer that I beg to move this amendment.

Mr. President : We pass on to article 14 : Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : Sir, I do not wish to move it formally; I only wish to point out one or two things for the consideration of the draftsman. So far as the definition of a State is concerned, in article 12 as well as in article 36 the word ‘State’ has been defined as “the State”. That binds the two words in a rather tight union. As a result of this, we have to use the expressions, the State has this right, the State has that and so forth. Remembering that the expression “the State” as defined in articles 12 and 36 includes not only the Government of India, but also the Government of the Provinces, the Government of the States, District Boards and ‘Municipalities, Local Boards, and Union Boards and others, there will be hundreds of thousands of similar institutions which would be comprehended within the expression “the State.” As we have defined the expression used in Part IV beginning with article 37 up to article 50, we have always used the expression. “The State shall, etc.”

The word “the State” would be really appropriate if there was only one State to which we refer. But in view of the multiplicity of States which would be meant and in order to enable us to use freely the expression, ‘this State’, ‘that State’, ‘any State’, ‘every State’ and so forth, in order to give us full latitude to use any article or word that may suit the context, the word ‘the’ should be separated from the definition. The words ‘the’, ‘any’ or ‘every’ must depend on the context and should not be prejudiced by the definition. I do not want to move the amendment but, as I have suggested, this is a matter of drafting and can be more profitably left over to the Drafting Committee for consideration, and if they agree, then these things can be taken as moved.

Mr. President : Amendment Nos. 35 and 36 are not moved. We pass to article 18.

I think No. 54 is covered by what you said just now, Mr. Naziruddin Ahmad ?

Mr. Naziruddin Ahmad : Yes.

(Amendment No. 55 was not moved.)

Mr. President : We pass on to article 22. Mr. Shibban Lal Saksena.

Prof. Shibban Lal Saksena (United Provinces : General) : Sir, in clause (4) and clause (7) I have some amendments. I beg to move :

“That in clause (4) of article 22, for the words ‘No law providing for preventive detention, the words, brackets, letters and figure ‘Nothing in sub-clause (b) of clause (3)’ be substituted; and at the end of sub-clause (b) of clause(4), the following be added:—

‘authorising such longer detention.”

My other amendment is :

“That in clause (7) of article 22, the words ‘for a period longer than three months’ be deleted.”

I only want that the phraseology of clause (4) should be improved and in clause (7) I want that the words 'for a period longer than three months' should be deleted. Parliament must have the power to make laws for shorter as well as longer detention periods.

Mr. President : Mr. Saksena, as regards No. 82, does it not go against a previous decision?

Prof. Shibban Lal Saksena : That means Parliament can make law for less than three months or more than three months. I do not want to restrict the power of Parliament only to periods above three months. I do not want the Executive to use the power.

Mr. President : How will it stand if it is read along with clause (4) ?

Prof. Shibban Lal Saksena : It will read—

“Parliament may by law prescribe the circumstances under which and the class or clause of cases in which a person may be detained under any law providing for preventive detention etc.”

What I want is that Parliament should have power to legislate authorising Government to detain persons either for less than three months or more than three months. According to this Parliament will not have power to make laws for less than three months.

(Amendments Nos. 83 and 84 were not moved.)

Mr. President : We proceed to article 31.

(Amendment No. 115 was not moved.)

Mr. Naziruddin Ahmad : Sir, in connection with my amendment No. 116, I wish to draw the attention of the House, the Drafting Committee and especially the draftsman to the use of the word 'Government of India'. In fact this is to distinguish this expression from Dominion of India'. I would submit that the word 'Dominion of India' really covers the period from 15th August 1947 up to the 25th January, 1950. Before that we had the expression Government of India', the expression 'Government of India' should be confined to Government before the 'Dominion' stage came in. After the Dominion stage is over, I submit that the expression 'Union Government' or the 'Government of the Union' should be used. This would be in accord with what we have done. We have already used "The Union of India' in article 300 clause (i) and in other places. Then we have used in some articles the expression 'Affairs of the Union.' We have also used in other places the expression 'the Union'. So we have already described the Government of India as the Union. So I submit that instead of using the expression 'Government of India', which would also include the Government before the Dominion stage, there should be some distinctive expression which may be fittingly described as the Union Government or the Government of the Indian Union. We have already in article 1, said that India shall be a 'Union' of States. So in the new set-up things instead of the expression 'Government of India', the expression Union Government or 'The Government of Indian Union', or similar expression should be used. I have suggested some amendments, only desire that this may be considered by the Drafting Committee.

Mr. President : No. 117—Mr. Sidhwa.

Shri R. K. Sidhwa : I understand that the word 'otherwise' as suggested by the Drafting Committee covers the contention of my amendment. Therefore I do not propose to move the amendment.

Mr. President : Then I come to amendment No. 118, standing in the name of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : Sir, with regard to amendment No. 118, it is merely a drafting amendment, and I should leave it to the draftsman.

Mr. President : Then I come to article 34 which is a new article, and we have a number of amendments to it, Mr. Das. That is for deletion.

Shri B. Das : Sir, I do not move it.

Prof. Shibban Lal Saksena: Sir, I Want to move it.

Mr. President : You want to move for its deletion ?

Prof. Shibban Lal Saksena : Yes, Sir, this article 34 is a new article. It says that when martial law is declared, then Parliament will have the power to indemnify the officers. I think that this new article should be ruled out of order. It was never passed by the Assembly before. Secondly, I think the provision of this article will encourage officers working in the martial law area to commit excesses and hope for indemnification by an Act of Parliament. Therefore, I say it is not proper. Martial law whenever proclaimed, should be proclaimed according to the law about it. It should not be permitted to go beyond the law. So I think this article is not necessary and it should be removed from the Constitution, and also as I said, it is out of order. I move :

“That article 34 be deleted.”

Shri. Brajeshwar Prasad (Bihar : General) : May I speak on this amendment, Sir.

Mr. President : We shall have all the amendments first, and then Members can speak.

Amendment No. 122, Mr. Kamath.

Shri H. V. Kamath : May I know move all the three amendments together ?

Mr. President : Yes.

Shri H. V. Kamath : Mr. President, Sir, I move amendments Nos. 122, 123 and 124.

“That in article 34, the words ‘or any other person’ be deleted.”

“That in article 34, for the word ‘order’ the words ‘public order’ be substituted.”

And the last one is No. 124 which says—

“That in article 34, for the words ‘done under martial law’ the words ‘done by such person under martial law’ be substituted.”

Sir, at the very outset, let me make it clear that I would welcome the deletion of any reference to martial law in the Constitution, as suggested by my Friend Prof. Shibban Lal Saksena. There are sufficient provisions in the Constitution for the maintenance of public order and peace and tranquility in the country. We have also adopted Chapter I dealing with emergency provisions in the Constitution. But once we accept, or assume that a situation may arise when martial law will have to be proclaimed, then certain consequences follow. There are certain acts done during the administration of martial law. We are all very well aware of the operation of martial law, and there are acts done by persons in charge, or in authority which strictly under the law of the Constitution may be illegal, and so those persons may have to be indemnified later on so as to safeguard their position against any undue penalty or punishment for acts done by them. It is with a view to this that I submit these amendments to the House.

Article 34, as moved by the Drafting Committee, seeks to indemnify any person in the service of the Union or of a State, and any other person also. I do not desire that we should go so far as to indemnify any person, whoever he may be. We may make an exception of persons who are in the service of the Union or of a State. But the change proposed is to insert a provision with

regard to all persons. Such a change is far too sweeping, and must not be allowed to find a place in the Constitution. Therefore, I have moved this amendment, that the words “or any other person” be deleted. If we indemnify at all, we should indemnify only those persons who are in the service of the Union or of a State during the administration of martial law in any area.

The other two amendments are, more or less, formal ones. The first one seeks to bring article 34 in conformity with the phraseology of article 33, where the words used are “public order” and therefore, I have suggested that this article also may be on the same lines as article 33 and the word “order” be replaced by the words “public order”.

The last amendment follows from the wording of the first part of article 34. When we refer to acts done by any person in the service of the Union or of a State, it is necessary to make it specifically clear in the latter part of the article as well, when we refer to the acts of such persons. Therefore, the word “such” in my judgment, is necessary so as to avoid any confusion with regard to acts done by any person other than the public servants referred to in the first part of the article.

Sir I move amendments Nos. 122, 123 and 124 and I commend them to the House for its earnest consideration.

Mr. President : As this is a new article altogether, the question arises whether I should allow it to be moved by way of an amendment. I think in all Constitutions, either written or unwritten, I do not know, but my idea is that all Constitutions allow such indemnity Acts to be passed after martial law has been in force; and difficulty might arise if there was no specific provision in our Constitution for indemnifying acts done during the period of martial law, if we do not have a specific provision here. And therefore, I allow this amendment of the Drafting Committee.

As regards the other amendments which have been moved, they are now for discussion. Members, if they wish, can speak now on this article as well as on the amendments which have been moved.

Shri Brajeshwar Prasad : Mr. President, Sir, I rise to support this new article. I will not traverse the ground already covered, or repeat the arguments in favour of it, as you have, Sir, already admitted this article. The Drafting Committee had the power to suggest the necessary amendments. Therefore, I think that they have not gone out of the scope of their jurisdiction. I think, that when a revolutionary situation has arisen in the country, then the Government may be forced to resort to martial law. And extraordinary situations cannot be tackled by the ordinary law of the land. It is only when a revolutionary situation has arisen that martial law is enforced. Revolutionary situations can only be tackled by revolutionary methods. The danger that all officers will escape scot-free is not a real danger or a serious danger at all. I say this because Parliament has got the power to review such cases. If an officer has acted without jurisdiction, if he has exceeded the requirements of the martial law, then Parliament will not indemnify those officers. Parliament has got the full right to review the conduct of these officers who have acted in an arbitrary manner. But it is only in an arbitrary manner that you can tackle the situation which has arisen in the country when martial law has been enforced. I support this provision not merely on the ground that similar provisions exist in other Constitutions of the world but also because it is a necessary and desirable, provision. Having due regard to the facts of our political life, I heartily support this article.

Mr. President : Any other Member wishes to say anything about this ?

Mr. Naziruddin Ahmad : No.

Mr. President : We shall now pass on to the next article. I think Dr. Ambedkar will reply to this at the end.

We come to article 35, and Mr. Kamath's amendment. But that, I think, is only a verbal amendment?

Shri H. V. Kamath : Yes, Sir I leave it to the discretion of the Drafting Committee.

Mr. President : Then we have to pass on now to article 47. Mr. Kamath and Mr. Naziruddin Ahmad have their amendment No. 140 to this article.

Shri H. V. Kamath : As far as I am concerned, I shall leave it to the Drafting Committee.

Mr. President : So that is left over.

Prof. Shibban Lal Saksena : Sir, I beg to move:

"That in article 48, for the words 'improving the breeds of milch and draught cattle including cows and calves and for prohibiting their slaughter' the words 'preserving and improving the breeds of cattle and prohibit the slaughter of cows and other useful cattle, especially milch and draught cattle and their young stock' be substituted."

Here again there is a substantial alteration in the original article as passed by this House. Sir, the original article stated:

"The State shall endeavour to organise agricultural 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 cows and other useful cattle specially milch and draught cattle and their young stock."

So the original article is that "the State shall prohibit the slaughter of cows". The present article has been watered down. It says:

"The State shall endeavour to organise agricultural and animal husbandry on modern and scientific lines and shall in particular, take steps for improving the breeds of milch and draught cattle including cows and calves and for prohibiting their slaughter."

So it does not say "That the State shall prohibit the slaughter of cows." Here it says "It shall take steps to improve the breeds of milch and draught cattle including cows and for prohibiting their slaughter." Here it is said that it shall prohibit the slaughter of cows and other useful cattle, especially milch and draught cattle. This is a very substantial alteration and I do not think the Drafting Committee was authorised to make such an alteration on such a fundamental thing on which there were strong discussions and it was agreed to after a very prolonged debate. I do not think anyone has the authority to change things in this manner and to substitute the original. I appeal that the original should be kept. It is out of order because the Drafting Committee was not permitted to make any such alteration as in this article.

Mr. President : Pandit Bhargava, is not your amendment more or less covered by the amendment of Prof. Shibban Lal Saksena?

Pandit Thakur Das Bhargava : It is partly covered but there are other things. With your permission, as my amendment No. 142 is not exactly the same as Prof. Saksena's, I beg to move:

"That in article 48, for the words milch and draught cattle including cows and calves and for prohibiting their slaughter' the words 'cattle and prohibit the slaughter of cows and other useful cattle, especially milch and draught cattle and their young stock' be substituted."

With your permission I also beg to move:

"That in article 48, for the words 'for prohibiting their slaughter', the words 'prohibit the slaughter of such cattle' be substituted."

or, alternatively,

That in article 48, for the words 'and for prohibiting their slaughter', the words 'and prohibit their slaughter' be substituted"

In dealing with this article I would first of all beg to remind the House that this article was fairly hotly debated in this House. This article has the sanction of the whole House and of the largest party in the Assembly. Moreover, Sir, this article, if I am not encroaching upon any privilege, I may say, is one which was approved by the Chairman of the Drafting Committee. The original wording was quite different but we took good care to see that the drafting was done by such hands that no one could possibly take exception to it. Previously it was a much stronger one, but ultimately it was drafted in this form. When it was debated by the House, full reasons were given why these words were selected. My submission is that in a matter of this kind, when a particular article has been passed, after being supported or opposed, there is no reason why the Drafting Committee should tamper with the wording of such a section like this. Moreover, if the House will remember, there were many other amendments moved in this House to this article. Seth Govind Das moved an amendment from the religious point of view, but it was not accepted. My submission is that every word in this article is to my mind a sacred one, in this sense that it has got the imprint of the whole House. Secondly, I submit that on the basis of this article, some of the Provincial Governments have taken action. They have gone further and prohibited the slaughter of cows. Therefore, when this article has practically been acted upon by some of the provinces, it is not fair now to tamper with it.

Coming to the article which is sought to be amended as it is now before us I would beg of you to consider it. Now the article runs:

“The State shall endeavour to organise agricultural and animal husbandry on modern and scientific lines and shall, in particular take steps for improving the breeds of milch and draught cattle including cows and calves”

The original words were: “. . . for preserving and improving the breeds of cattle . . .”

May I submit that “improving the breeds of cattle” is different from “preserving and improving the breeds of cattle. ..”. It may be said that no breed can be improved unless it is preserved but I think it is wrong to think so.

It may happen that a breed has to be practically destroyed for the purposes of improvement. It may be argued by some that cattle of a certain breed should be destroyed so that there might be subsequent improvement in regard to others. Now this is a matter of very delicate importance.

Shri Brajeshwar Prasad : What about “prohibiting” ? It means preservation!

Pandit Thakur Das Bhargava : In times of famine it is the duty of the Government to preserve certain breeds though it may not be improving them. Therefore, these words have a special meaning and they should not be tampered with.

Now to turn to the point of Mr. Brajeshwar Prasad to which he has drawn my attention. He says that the word “prohibiting” is there and therefore it would include “preservation”. If he reads into the section he will find that this “prohibition” has been tampered with in this way, the words now being:

“..... the breeds of milch and draught cattle including cows and calves and for prohibiting their slaughter.”

If this “their” refers to cows and calves, then what about bulls and bullocks and buffaloes and he-buffaloes? If it refers to milch and draught cattle, then the question will have to be gone into as to what is a milch cattle. Then again “dry” cattle is not milch cattle. Then what is draught cattle? There are bound to be difficulties about all this. In my humble submission, a fair reading of article 38-A would mean that so far as cows and young stock are concerned, there is absolute prohibition. The words are “and shall prohibit the

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slaughter of cows.” This usefulness of the cattle relates to drought cattle. The useful cattle should not be slaughtered. Now the question is what is a useful cattle? In the amendment the word “useful” does not appear. The House remembers that the Government appointed a Committee and the report of the Committee was accepted by the Government. The Government is now committed to the preservation and the prohibition of slaughter of useful cattle. There are Bills pending before the Legislative Assembly in regard to these kinds of cattle.

If you compare the wordings, it would appear that in the original article it was:—

“ . . . take steps for preserving and improving, the breeds of cattle and prohibit the slaughter of cows and other useful cattle, specialty milch ”

Now these words shall go away and be replaced by :—

“ for prohibiting their slaughter”. My humble submission is that though there may not be a violent difference between the two, all the same the emphasis on the word “shall” which made this directive principle almost as an imperative article in the Constitution disappears. I beg of you not to tamper with it but allow it to remain in its present form. The first thought which Dr. Ambedkar gave to this provision was a right one and now if he wants to improve the wording. I submit the meanings also are altered. In view of this, I would beg of the House not to tamper with this article. It is a very delicate matter. We have practically substituted this article for the article which other Members wanted from a religious point of view. It is now simply a utilitarian measures but still a measure in which the religious sentiments of crores of people are involved.

I would submit one word more in regard to amendment No. 144. The words “and their slaughter” are capable of more than one meaning. They might refer only to cows and calves, they might refer to milch and draught cattle. Whether they refer to one or both meanings, it is objectionable in both ways. I would beg of you to consider the more extensive meaning of the original section 38A which includes both these meanings. No doubt if falls short of the expectations of the general populace but it was a measure on which the House was agreed as a compromise. This compromise ought not to be interfered with.

Mr. President: Mr. Naziruddin.

Mr. Naziruddin Ahmad : I am not moving my amendment.

Mr. President : Does anyone wish to say anything about this article or the amendments?

Then we shall pass on to article 53. Amendment No. 151, Mr. Kamath.

Shri H. V. Kamath : Mr. President, I move, Sir, amendments Nos. 151 and 152.

151 to the effect—

“That in clause (i) of article 53, for words ‘this Constitution’ the words ‘the Constitution’ be substituted.”

Then amendment No. 152 to the effect—

“That in clause (i) of article 53, after the words ‘Constitution’ the words ‘and the law’ be added.”

If the amendments moved by me were accepted by the House, this clause (i) of article 53 would read as follows:—

“The executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with *the Constitution and the law.*”

This was the form in which we adopted this article during the last session of the Assembly. I see no reason why the changes that are being sought to be made by the Drafting Committee should be at all made in this clause of the article. I see no point whatever in the changes that have been suggested by the Drafting Committee. Let us examine it a little more closely. If the reference in this clause had been only to the President of the Union, then perhaps there is some force in not referring to the law of the land, because so far as the President is concerned he is bound to act under the Constitution, and we have also a provision for impeachment of the President for any violation of the Constitution. But during the last session these words were specifically added—suggested by the Drafting Committee and accepted by the House. What were those words?

“President..... either directly or through officers subordinate to him”.

We fought against those words, we suggested that these words were absolutely unnecessary, but the Drafting Committee had its own mind and carried its point through and inserted these words which even now I feel are unnecessary. But this phrase “through officers subordinate to him” has been accepted by the House and if that addition stands then I for one feel that the law must be specifically mentioned. The House will see that in clause (2) also of the same article there is a reference to the supreme command of the Defence Forces by the President and the exercise of the command shall be regulated by law. In the Constitution itself we have left so many things to the law-making power of Parliament. Our Constitution has not decided everything; so many things are left to Parliament to be regulated by law, and therefore it is absolutely necessary to say, when you refer to exercise of power through officers subordinate, that it will be regulated by the Constitution and the law.

The first amendment is merely a verbal one, because I feel that whenever the Constitution is referred to we need not specifically say “this Constitution” every time; “the Constitution” means the Constitution of India. I do not know why the Drafting Committee has tripped in this fashion about this clause. I commend amendments 151 and 152 to the House for its earnest consideration.

(Amendment No. 153 was not moved)

Mr. President : Does anyone wish to say anything about the amendments which have been moved by Mr. Kamath?

Then we pass on to the next article No. 57.

Mr. President : Amendment No. 156*, Mr. Kamath.

Shri H. V. Kamath : That is merely formal, Sir, I leave it to the good sense of the Drafting Committee.

Mr. President : Very well. Then we go to article 69. Amendments Nos. 188 and 189, Mr. Kamath.

Shri H. V. Kamath : Sir, I move Amendment Nos. 188 and 189. 188 is to the effect—

“That in the form of oath or affirmation in article 69, the words “as by law established” be deleted.”

And No. 189—

“That in the form of oath or affirmation in article 69, for the words ‘the duty upon which I am about to enter’ the words ‘the duties of the office upon which I am about to enter’ be substituted.”

*That in article 57, the words ‘subject to the other provisions of this Constitution’, be deleted.

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Taking the article as suggested by the Drafting Committee, I think the changes suggested by me are very necessary. Taking the first amendment first, the oath as suggested by the Drafting Committee refers to the "Constitution of India as by law established". It is wholly redundant to say that the Constitution is established by law. As a matter of fact the law flows from the Constitution and not *vice versa*. We adopt the Constitution and whatever laws we may make flow from the Constitution subsequently. This is a supreme, sovereign Assembly and certainly this not necessary for us to say that the Constitution that we have enacted here has been established by law.

The Honourable Shri K. Santhanam : May I point out to the honourable Member that the Third Schedule uses this phrase?

Shri H. V. Kamath : May I point out to Mr. Santhanam that the article about the oath of the President does not mention "the Constitution by law established" ?

The Honourable Shri K. Santhanam : It is different altogether.

Shri H. V. Kamath : It is quite the same, in my judgment. Mr. Santhanam may differ but if he refers to the oath for the President in article 60, he will find this reference to "the Constitution by law established" is not there. The Constitution is not established by law. The Constitution is there for what it is worth. If Mr. Santhanam does not see this fine point, I am sorry for him. In article 60, the oath for the President reads:

"I..... will faithfully execute the office of President..... and will to the best of my ability preserve, protect and defend the Constitution *and the law*."

"And the law" is a different matter, but the Constitution is not established by law. That is my point.

The Drafting Committee may look into the amendment and I hope they will see their way to accepting amendment No. 188, because there is a distinction between "the Constitution established by law" and "the Constitution as framed by a sovereign Assembly." It is redundant to say that it is established by law.

As regards my second amendment I am sorry for the bad English used by the Drafting Committee. The Committee is composed of several experts, legal, constitutional and linguistic. I fail to understand why that Committee made such a mistake, so far as the English language is concerned. The House will see that a person enters upon "the duties of *his office*." He does not enter upon his duty. It is the "duties of *the office*" that should be referred to. If the House will turn to article 71 clause (2) the English used there is correct "duties of the office of President or Vice- President". I will just refer to another previous article, article 68, last part of clause (2) where the words used are "from the date on which he enters upon his office". The correct English is the "duties of the office upon which he enters" and I think all sensible persons will agree that that is correct English. If my amendment is accepted by the House the form of oath or affirmation will read as follows:

"I, A.B., do swear in the name of God that I will bear true faith and allegiance to the

 solemnly affirm

Constitution and that I will faithfully discharge the duties of the office upon which I am about to enter."

I move the amendments, and commend them to the acceptance of the House.

Mr. President : As Mr. Santhanam has pointed out, the same expression occurs in Schedule III.

Shri H. V. Kamath : That will have to be changed consequentially.

Mr. Naziruddin Ahmad: Sir, I beg to move:

“That in clause (2) of article 71, for the words ‘the date of the decision’, the words ‘the time of the decision’ be substituted.”

Sir, this amendment deals with the termination of the tenure of office of the President by reason of the setting aside of his election by the Supreme Court. The question is whether the tenure of office ends with the date of the decision or the time of the decision. If the decision is given at twelve o’clock, it should be in accord reason and logic that the President should function up to 12 o’clock and cease to be the President after that hour. If we allow the language to remain as it is, it would mean that if the decision is passed at twelve o’clock then the President ceases to function with effect from the previous midnight. The effect of that would be to invalidate all acts done by the President from the midnight of the previous night up to twelve o’clock.

The Honourable Shri K. Santhanam : There is already an amendment to that effect (No. 448).

Mr. Naziruddin Ahmad : The difficulty with these amendments is that most of these amendments have been practically taken from the amendments of Members. I am of course interested in the correction, but there has been wholesale ‘lifting’ of amendments of Members and their being passed on as, those of the Drafting Committee. I do not grudge them this distinction. This is not the first time that this has happened. I have been hinting it all through the second reading stage. They will not openly accept our amendments, but move them as their own.

Mr. President : I do not think the Drafting Committee will grudge any credit to other Members for their amendments.

Prof. Shibban Lal Saksena : Sir, I beg to move:

“That clause (3) of article 77, be deleted.”

This again is a new provision, which is an infringement on the responsibility of the Ministers and should not be allowed to be there. This is either redundant or mischievous and should not be there.

Shri R. K. Sidhwa : Mr. President, Sir, I beg to move:

“That in clause (3) of article 77, for the word ‘President’ the words ‘Prime Minister’ be substituted.”

Sir, this article relates to the conduct of Government business and Government business means the functions of Ministries. The Head of the Ministries is the Prime Minister, and while I know that all orders are made in the name of the President, this particular article has nothing to do with the President. It is the internal affairs of the Ministry for which the Prime Minister, in consultation with the Ministry, itself, is responsible. Therefore, the word “President” should be substituted by the words “Prime Minister”.

I do not dispute the fact that under law all the orders are made in the name of the President. But I do make a difference in this for the reason that this has nothing to do absolutely with the rules relating to the internal working of the Ministry and therefore Parliament has no voice in this. Of course Parliament can criticise it. But this is an internal matter for which the Minister is responsible and therefore, the Prime Minister should make rules, in consultation with the

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Ministry and not the President. The Prime Minister should be the signatory to that.

Shri H. V. Kamath : Mr. President, Sir, I move amendments No. 203 and 204.

“That in clause (3) of article 77, for the word ‘shall’ the word ‘may’, be substituted.”

“That in clause (3) of article 77, for the words ‘more convenient’ the words ‘efficient and convenient’ be substituted”.

or, alternatively,

“That in clause (3) of article 77, the word ‘more’ be deleted.”

I do not agree with my Friend Professor Saksena that there is no need for a provision of this kind. It is necessary so far as the transaction of the business of the Cabinet is concerned that there should be certain rules. And who is to make these rules? The question is whether Parliament should make it or the President. The Rules of Business should be left to the President, acting upon the advice, as the Constitution has laid it down, of the Ministers. Therefore, there is no force in Professor Saksena’s amendment, because when the word “President” is mentioned, it always means President acting on the advice of his Council of Ministers.

Prof. Shibban Lal Saksena : But there is nothing to that effect in the Constitution.

Shri H. V. Kamath : That point was raised by me in the last session, and Dr. Ambedkar and Shri Alladi Krishnaswami Ayyar assured us that there was no necessity for a specific provision of that kind.

As regards the amendment moved by me for substituting ‘may’ for ‘shall’ the reason is that ‘shall’ is somewhat inapt there. As we have ‘may’ in several other articles, we may have it here also. It has often the force of ‘shall’. ‘May’ is more appropriate here and conveys the sense of the article much better.

My second amendment. No. 204, seeks to change “more convenient” into efficient and convenient”. I believe this clause has been bodily lifted from the Government of India Act which fortunately or unfortunately has served as a guide and beacon to the wise members of the Drafting Committee on almost all occasions. They have told us that such and such is the language used in the Government of India Act and asked us whether we dare sit in judgment upon the English used by Sir Samuel Hoare and his cohorts: and who are we, mere Indians, to find fault with their English? It is now, however, admitted all over the world that Indians are better linguists than Englishmen. There is a story that a certain eminent person in England once said that there were only two persons in the world who spoke perfect English, and they were Indians. This was said some years ago. (Shri R. K. Sidhwa: Who are they?) As Mr. Sidhwa seems to be inquisitive about their names, I may say that the reference was to the late Srinivasa Shashtri and Sarojini Naidu. When this is the case, if Indians speak perfect English, why should we swear by the English of the Government of India Act and take it as one hundred per cent. correct? It would be wiser to correct the English found there and it would be more sensible if we say instead of “more convenient”, “efficient and convenient”. It is admitted on all hands that there has lately been some deterioration in efficiency. Let us therefore resolve that we will not merely arrange for convenient transaction of business, but also for efficient transaction of business. With these words I move these two amendments and commend them to the House.

Mr. President : We will now pass on to article 90, Amendment No. 215.

Mr. Naziruddin Ahmad : I wish to move Amendment No. 214.

Mr. President : That does not really arise.

Mr. Naziruddin Ahmad : Sir, I am not moving amendment No. 214. I want merely to explain an anomaly. I only wish to point out that the word 'the' has been misused in a large number of cases. In many cases where we speak of the Deputy Chairman, the Chairman or the Speaker and so on, we have not uniformly used the word 'the'. I have tabled amendments to make them uniform. That may be taken into account.

I am not moving amendment No. 215.

Mr. President : We will now take up article 96.

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

"That in clause (2) of article 96, for the words 'and shall, notwithstanding anything in article 100, be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings but not in the case of equality of votes', the words 'but, notwithstanding anything in article 100, shall not be entitled to vote at all on such resolution or on any other matter during such proceedings' be substituted."

My next amendment which I move reads thus:

"That in clause (2) of article 96, for the words and figure anything in article 100' the words and figure 'anything contained in article 100' be substituted."

My second amendment is merely verbal and I leave it to the good sense of the Drafting Committee to deal with it as they deem fit or necessary. But the first amendment (227) is a consequential and substantial amendment. Clause (2) suggested by the Drafting Committee is new. There has been some distinction made between the procedure for the removal of the Speaker of the House of the People and the procedure for the removal of the Chairman of the Council of States. The Chairman of the Drafting Committee has made no speech before the House today why this distinction has been sought to be made.

If the House will turn to article 292 (2), honourable Members will find that so far as the procedure for the removal of the Chairman of the Council of States is concerned, he is not entitled to vote at all on a resolution for the purpose.

The Honourable Shri K. Santhanam : May I point out that the Chairman is not a member of the Upper House? He is the Vice-President.

Shri H. V. Kamath : The Vice-President of the Union is Chairman. On merits also I do not see why when there is a vote of censure or no-confidence, or other resolution seeking to remove him from office, he should be given the right to vote at all.

Shri T. T. Krishnamachari (Madras : General): His vote is not being taken away.

Shri H. V. Kamath : Mr. Krishnamachari may reply to the debate later on. He need not interrupt me unnecessarily.

When there is a resolution in the House for the removal of the Speaker, the Speaker can be present in the House, he can take part in the proceedings, he can defend himself but when it comes to the matter of voting it is absolutely against all canons of propriety and justice that he should vote. Certainly he can defend himself, but to allow him to vote is very unfair. The Drafting Committee may know better, but so far as I know, a Speaker who is sought to be removed

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from his office must not be given the right to vote. Supposing there is a close tie in the first instance, 55 and 56, the Speaker may by his vote re-install himself in office, which is certainly not intended by the article. If the House is divided in that fashion, the Speaker by his single vote, by his own vote in the first instance, can re-install himself in office, which certainly the House does not want to happen. Therefore I ask, Sir, that the Speaker should be divested of his vote during the proceedings for his removal from office. I move my amendment and commend it to the House for its serious consideration.

(Amendment No. 229 was not moved.)

Shri R. K. Sidhwa : Mr. President, Sir, this article refers to the discussion of the conduct of the Speaker in Parliament. Therefore, the new clause (2) is perfectly correct. Ordinarily the Speaker has no right to speak or take part in the proceedings of the House, but when his own conduct is being discussed, it is only fair that he should be given an opportunity to clear his own conduct, and therefore clause (2) is correct. I only want, Sir, a small change in the third line. I want to see that the convention that the Speaker in other cases shall not speak and shall not take part in the proceedings of the House be maintained. The clause says "shall have the right to speak in, and otherwise to take part in the proceedings of, the House of the People while any resolution for his removal, etc." I want that the words "only when" should be substituted for the word "while". I want to make it more emphatic. It is a very healthy convention that the Speaker shall not speak and shall not take part in the proceedings of the House except when his own conduct is under discussion.

Mr. President : It means that as it is.

Shri R. K. Sidhwa : If that is so then it is all right. As regards voting, Mr. Kamath said that the Speaker should not have the right of voting. I think he must have the right of voting. After all, he is a member of the House and he should be allowed to vote in the first instance, but on the second voting he should not exercise his vote. He must have one vote.

Mr. President : We pass on to article 100. Amendment No. 231.

Shri T. T. Krishnamachari : In view of the Drafting Committee's amendment No. 452 in the Second List, honourable Members may please consider whether it is necessary to move their amendments.

Mr. President : As regards the amendments of which Mr. Kamath has given notice with reference to article 100, Mr. Krishnamachari has pointed out that there are certain amendments with regard to it which are sought to be moved by the Drafting Committee. They are in the Second List No. 452, and in view of those amendments perhaps it may be unnecessary for you to move yours.

Shri T. T. Krishnamachari : Many of them can be fitted into that except the one negative amendment.

Mr. President : Mr. Kamath, if you wish to move yours, you are at perfect liberty to move them. It is only pointed out that it might not be necessary for you to move them. All right, move them. I think it will save time if you move them.

Shri H. V. Kamath : Sir, I move amendment Nos. 231, 234, 235 and 238 of this List.

“That in clause (1) of article 100, for the words ‘other than the Speaker’ the words ‘other than the Chairman or Speaker’ be substituted.”

“That in the second para of clause (1) of article 100, for the words ‘acting as such,’ the words ‘acting as Chairman or Speaker’ be substituted.”

“That in the second para of clause (1) of article 100, for the words ‘in the case of’ the words ‘in case of’ be substituted.”

“That in clause (3) of article 100, for the words ‘until Parliament by law otherwise provides. The quorum shall, be one-tenth of the total number of members of the House.’ The following be substituted as second para of that clause:—

‘Until Parliament by law otherwise provides, the quorum shall be one-tenth of the total number of members of the House.’ ”

Amendment No. 235 is merely verbal with regard to the article “the”. I leave it to the consideration of the Drafting Committee to be dealt with at the proper stage. Amendments Nos. 231 and 234 go together. They are similar and if the House will compare the draft agreed to in the second reading with the draft now presented, they will see the difference. I do not know whether it is a printer’s devil or something else or whether it is deliberate. Clause (1) of this article 100 as now presented to the House, in the last part thereof, refers to “Other than the Speaker or person acting as the Chairman or Speaker.”

The Honourable Shri K. Santhanam : He is not a member and so he is not given the vote.

Shri H. V. Kamath : Is it the position that when the Vice- President acts as the Chairman of the Council of States, he has no vote at all ?

Shri L. Krishnaswami Bharathi (Madras: General): Except the casting vote as Chairman.

Shri H. V. Kamath : Then it is all right.

I come to amendment No. 238. Mr. T. T. Krishnamachari has just now told us that the Drafting Committee has also thought over the matter and after bestowing due consideration on this clause they have suggested an amendment on the same lines. I have no desire to withhold from them the credit that is their due for the hard labour they have put in, and if they want the credit let them take it, but as the amendment stands in my name, I move it formally and commend it for the acceptance of the House.

Mr. President : The wording is somewhat different, but the substance is the same. However, I take it as moved. No. 232 standing in the name of Mr. Naziruddin Ahmad is a formal amendment.

(Amendment No. 232 was not moved.)

Mr. Naziruddin Ahmad : Sir, with regard to amendment No. 233, I wish to make this observation that article 100 has four different paragraphs. The first paragraph is marked as clause (1), the second paragraph does not bear any number at all, the third paragraph is No. 2 and the fourth paragraph is No. 3. I submit that paragraph 2 which is unnumbered is a very unusual thing in a legislative enactment. All paragraphs are either marked as articles or clauses or in the case of ordinary Acts as sections and sub-sections. It has never happened in my experience that a complete paragraph remains without any number. The object of numbering them is to identify them. Unless we number the second paragraph as No. 2, it will be difficult to refer to that paragraph in any judgment or any book or argument. One will have to say ‘paragraph following clause (1)’; in order to obviate that I have suggested that paragraph 2 should be marked as clause (2) and the other paragraphs are re-numbered

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accordingly. This has also occurred in article 189. Sir, I formally move the amendment.

“That in article 100, the second para of clause (1) be numbered as clause (2) and clauses (2) and (3) be renumbered as clauses (3) and (4) respectively.”

Shri Raj Bahadur : My amendment No. 236 is covered by amendment No. 452 of the Drafting Committee. Let the credit for it be entirely theirs, but the pleasure is mine.

(Amendments No. 237 and 239 were not moved).

Shri R. K. Sidhwa : Sir, my amendment reads thus:—

“That in clause (3) of article 100, for the word ‘one-tenth’ the word one-sixth’ be substituted.”

Sir, I am referring to clause (3) in respect of quorum. We had discussed this matter threadbare in the last session and after mature consideration the House came to the decision that there should be one-sixth as the quorum in either House of Parliament. Now, Sir the Drafting Committee suggests one-tenth. My point is that in the provisional Parliament with a House of 300 one-tenth would mean 30 members only and 50 members in a House of 500 thereafter. I ask in all humility, do the members of the Drafting Committee want, in the name of 35 crores of people, laws to be made by 30 people ? This is most unfair. It may be that in the House of Commons there is a very small number compared with the 600 members of the House of Commons. That may be so, Sir. Some good laws of the House of Commons we have imitated and copied, but if there is a bad law, I do not want to copy it. On the contrary, you are telling the Members that they may remain idle, they may come here or they may not come and the House will manage with 50 or 30 Members. I do not want to cast any reflection upon any Member but I think it is most unfair that we should lay down such a small number for the conduct of business. On the contrary, there must be such a provision that Members should be asked to realize their duty and attend all the sessions, particularly when laws are made, and I, therefore, contend that we should not be a party for putting in the Constitution a clause that there should be only 50 members in a House of 500 to make laws. That is not correct.

Dr. B. Pattabhi Sitaramayya (Madras: General): The rule does not say that there should be only 50 members.

Shri R. K. Sidhwa : It comes to that. We have our own experience also. I do not say that it says so. Many times we have seen this happening ourselves. May I ask how many members are present today ? My honourable Friend, Dr. Pattabhi Sitaramayya, knows it very well. When the Members are not there, we know the difficulty of having to hunt for them.

Dr. B. Pattabhi Sitaramayya : We do not want to put a premium on idleness and inertia.

Shri R. K. Sidhwa : The Members should also realize their duty and attend all the sessions. I do not think there should be a clause necessary to make them idle or not to attend the session. They have to discharge their responsibilities for they are elected by the people. They must also feel a sense of responsibility. I, therefore, contend that we should have a reasonable number for conducting the business of the House. I do not want 600 members to be present ; I do not want 500 members to be present; I do not want 250 members to be present. I only want a reasonable number, i.e., 80 members to be present. Is that not fair ? I will ask my honourable Friend, Dr. Pattabhi Sitaramayya, whether he will be satisfied with 50 members. I know he is not

the only member. I ask him-out of 500 members is 30 a sufficient number ? It is no use quoting the House of Commons. This means 50 members in the permanent Parliament, but 30 members in the provisional Parliament and we have 300 and odd in the Provisional Parliament at least. The next year will be a year of great events and we shall provide in the Constitution that 30 members in the provisional Parliament will make laws. I express my feeling very strongly on this matter and if there is going to be a disqualification on the members for not attending session let it be there. Let there be a clause that those who do not attend regularly will be disqualified. If the Drafting Committee feels that there should be such a thing, we could appeal to them to attend. Let the members also show a sense of duty. After having been elected they should not be so careless or negligent of their duty that is imposed upon them by the people in the constituency from which they are returned. I, therefore, feel, Sir, that the amendment that I have moved is an amendment which was discussed and passed in the last session. It may be that because we feel there is the difficulty in getting a sufficient number in the House, a small number is suggested. I say on the contrary it is the greater reason, and one or two adjournments will bring their lack of responsibility to the notice of the public. They cannot remain absent for all time. They have to explain to the people and if once or twice the House is adjourned, wisdom will dawn upon them and they will attend the House more regularly for conducting the business for which purpose they are returned. I commend my amendment for acceptance of the House.

Shri Brajeshwar Prasad : Sir, I was just thinking what will happen if there is a walk-out from the House. We have not visualized all the political possibilities in the country. In case of a walk-out, the Constitution will come to an end. In order to have a smooth sailing, it is necessary that a low quorum should be fixed. It does not prevent the Members of the House from coming and attending. We are not passing any law to the effect that only 30 members should attend the meeting of the Legislature. We are merely fixing the quorum. If we want that there should be no deadlock, we should have a low quorum.

Dr. P. S. Deshmukh (C. P. & Berar : General): Mr. President, Sir, I support the suggestion made by my honourable Friend, Mr. Naziruddin Ahmad, that all the paragraphs should be numbered.

There is one more suggestion I want to make and that is that the last portion of this article that "the quorum shall be one-tenth of the total number of members of the House" should precede clause (3), because in clause (3) we are determining what would be the consequences of want of quorum. As the article stands what is to be the quorum follows this. I think that is putting it in a wrong way. We should determine the quorum first and then the consequences should be stated. I think this is a small suggestion which should be acceptable.

Mr. President : That has been adopted in amendment No. 452.

Dr. P. S. Deshmukh : Secondly, I would support my honourable Friend, Mr. Sidhva, in his contention that the quorum should be one-sixth and not one-tenth.

Mr. President : The House will adjourn now; we sit again at 3 o'clock.

The Assembly then adjourned for Lunch till 3 P.M.

The Assembly re-assembled after Lunch at 3 P.M., Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

Mr. President : We shall now take up the amendments to the remaining articles. Article 128.

Shri Jaspal Roy Kapoor (United Provinces: General): May I speak a word on article 100?

Mr. President : Yes.

Shri Jaspal Roy Kapoor : Mr. President, I am tempted to speak on the amendment relating to the fixation of the quorum by the timely warning which the ringing of the bell has just given us proclaiming that there was no quorum in the House and inviting people to rush to the House to make up the quorum. I have also been provoked to speak on this subject by the vehemence with which my honourable Friend, Mr. Sidhva, has spoken on the subject desiring that the quorum should not be reduced from one-sixth to one-tenth. The heat and vehemence with which he made his speech would make one feel as if an attempt was being made to reduce the powers and privileges and rights of the Members of this House, which is not a fact. The suggestion contained in the amendment that the quorum should be reduced is a very wise, necessary and a useful suggestion which must be accepted. It is based on our past experience not only in this House but also in the other House when we sit as the Dominion Parliament. It appears to me that all this experience has been wasted on my honourable Friend, Mr. Sidhva.

Shri R. K. Sidhwa : Is that a creditable experience ?

Shri Jaspal Roy Kapoor : That is an experience which should make us wiser and I do not think there is anything detestable in it either for the members or to the House. I think members should not be expected to come and be in attendance here all the time when the Parliament is sitting, whether they are interested or not in the particular subject that is being discussed on a particular day or time. It would be sheer waste of time of those Members and would be also unnecessarily taxing the tax-payer. I think that Members should be expected to attend this House only when they feel interested in the particular subject which is being discussed and otherwise they might profitably employ their time elsewhere in more profitable and useful engagements—not necessarily personal engagements—but engagements for the benefit of the country. Why after all is it expected that all the 500 Members should keep on sitting here from morning to noon and noon to eve all the year round or for a major part of the year ? For I think, during the next two years at least and may be even thereafter, if we have many Members of the views of Mr. Sidhwa—for Mr. Sidhwa has been frequently pressing that Parliament should be sitting for much longer days or period—then for eight to ten months in the year Parliament would be sitting; and to expect 500 Members to be spending all the time here whether they are interested or not in the various subjects that come up for discussion, is to ask them to neglect the more important duties.

Members who come here as representatives of the people will be all responsible persons who will have duties to perform, not only here in Parliament, but outside also, in the political sphere, in the country, and I should have thought that we would expect them to devote as much time as possible to constructive work in the country to look after as many public institutions in the country as possible, rather than come here and wait here and merely be silent spectators of things in which they may not be interested. This amendment which suggests that the quorum should be reduced to one-tenth does not encroach on the rights and privileges of the Members. Mr. Sidhva and any other member who wishes to occupy, as much time of the House as he likes, can very safely

do so. Any member who wants to inflict as many speeches as possible, or put as many questions as possible or bring in as many amendments as possible, or make speeches of any length or of any quality—good, bad and indifferent—will always be at perfect liberty to do so. But why should any one expect that when he is addressing or occupying the time of the House, he should always have a very full House? While he may enjoy that privilege, he cannot always have the satisfaction of having a crowded House, and I say that it is very necessary, both from the point of view of the Government, from the point of view of the tax-payer and from the point of view of the Members too, and from the point of view of solid substantial work for the country, that the quorum should be fixed at as low a figure as possible. It is so from the point of view of the Government, because it will be very embarrassing if any legislation is delayed for want of quorum. It is so from the point of view of the tax-payer, because if all the Members keep on attending all these sessions, it will mean a heavy expenditure in the shape of daily allowance, and also from the point of view of the Members, as I have already said, they should do as much constructive work outside the Assembly as possible, coming to the Assembly only when they are interested in particular subjects which may be before the House.

Dr. P. S. Deshmukh : Or go to Chandni Chowk. (*Laughter.*)

Shri R. K. Sidhwa : Hear, hear.

Shri Jaspal Roy Kapoor : Dr. Deshmukh can go to Chandni Chowk or to any other more interesting place where his attractions lie; but then, why should all members be in Delhi all the time? They may keep themselves busy in their respective places, and do more substantial, constructive, political economic and social work, rather than waste their time here. Therefore, I submit that the suggestion made to reduce the quorum from one-sixth to one-tenth is a very wise and very useful suggestion and must be accepted.

(Some Members rose.)

Mr. President : I do not think this simple amendment deserves so many speeches. Members know all about it, and they can either vote it down or vote for it. So we now go to article 128, and Pandit Thakur Das Bhargava's amendment No. 288.

(Amendment No. 288 was not moved).

Mr. President : Then amendment No. 289 of Mr. Kamath.

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

"That article 128 for the words 'the President may by order' the words 'Parliament may by law' be substituted."

If my amendment is accepted, the article would read as follows :

"Notwithstanding anything in this Chapter, the Chief Justice of India may at any time, With the previous consent of the President, request any person who has held the office of a Judge of the Supreme Court or of the Federal Court, to sit and act as the Judge of the Supreme Court, and every such person so requested shall, while so sitting and acting, be entitled to such allowances as Parliament may by law determine etc., etc."

The article corresponding to this in the Draft Constitution as agreed to by the Assembly at the consideration stage is article 107, and the interpolation now made consists of the words—"be entitled to such allowances as the President may by order determine." If the House will turn to article 125, clause (2), my honourable Colleagues will see that that clause lays down that Parliament may by law determine the privileges, allowances and rights in respect of leave of absence, pension etc. which a Judge of the Supreme Court shall be entitled to. But here—of course this is a temporary measure, I realise that—but here the matter is left to the President of the Union to regulate. I do not see why this matter also could not be left in the hands of Parliament, to be

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determined by law. Parliament may provide that when Judges of the Supreme Court or the Federal Court, or retired judges—the articles deals with retired judges—when such persons are asked to or requested to sit and act as Judges of the Supreme Court, though they may not be deemed Judges of the Supreme Court, still Parliament may determine what allowance they will be entitled to. There will be no difficulty for Parliament to legislate in this matter. It can legislate generally as to what allowances the Judges shall be entitled to receive. Instead of the President doing it, Parliament may do so. With these words, Sir, I commend my amendment to the House.

Pandit Balkrishna Sharma (United Provinces: General) : Sir, if Mr. Krishnamachari would be good enough to enlighten us on the point, it would help us. My point is that we are told that in the future Constitution, we have abolished the office of additional Judges or temporary judges. Then how does this, article 128 correspond with that decision of ours, or that intention, if that intention be in the Constitution that additional judges should be abolished? In that case, how will this article stand.

Mr. President : It is not a case of additional Judges at all. A retired Judge may, for a temporary period, be requested to act for a particular period or for a particular case. It is a retired Judge and not an additional Judge at all. A person who has acted and held the post of Judge of the Supreme Court or Federal Court, a person like that, may be requested to attend.

(Amendment No. 290 was not moved.)

(Prof. Shibban Lal Saksena rose.)

Mr. President : We have to finish all the amendments in List I, and those that are not moved, may have to be left over altogether.

An Honourable Member : Will they lapse?

Mr. President : Yes. All these amendments which are in List I should be moved in the course of the day, and therefore I have been suggesting from the very beginning to Members to be as short as possible and not to insist on speaking or even moving amendments which are not of substance.

Prof. Shibban Lal Saksena : I wanted this thing to be deleted because if the President is permitted to fix the allowances of the Judges, it means they are subservient to the President and to the Executive. This is most undesirable. If Parliament does it, it is a different matter.

Sir, I then move:

“That sub-clause (c) of clause (1) of article 145 be deleted and before clause (1) of article 145, the following be inserted:—

‘The Supreme Court shall make rules for regulating the practice and procedure of the appropriate proceeding relating to the enforcement of rights conferred under Part III.’ and the subsequent clauses be renumbered accordingly.”

Part III deals with fundamental rights. According to you, the rules and the procedure of the Court will be made by the President. I want that the Fundamental Rights should be within the purview of the Supreme Court. I have therefore put that this clause (c) should be deleted and that it should be quite independent and should come before it. This is most important. Fundamental Rights should not be within the power of the President to approve or disapprove.

Mr. President : But your amendment goes against the previous decision.

Prof. Shibban Lal Saksena : No. It is absolutely new. This is clause (c) of article 145.

Mr. President : No. It is clause (b) of the article.

Prof. Shibban Lal Saksena : This is clause (c) on page 58.

Mr. President : I see: you are referring to (c).

Pandit Thakur Das Bhargava : Amendments 308 and 309 are practically the same. I wish to speak on them. Originally I sent in an amendment to the Constitution, which appeared to the last of amendments as 109A, the first part of which ran as follows:—

“The Supreme Court shall have, in respect of the enforcement of Fundamental Rights guaranteed by the Constitution jurisdiction and powers to determine and regulate the manner and method of the appropriate proceedings mentioned in section 25 of the Constitution.”

At the time this was moved, I requested you to hold it back and it was unfortunate that this amendment was ruled out by you on the last day of the second reading. I am glad that the Drafting Committee has been pleased to accept the principle which I wanted to embody in the second reading of the Bill. Though I am thankful to them for this rule (c), I must say that it is in its present form soulless. It is a mere shelf. If you kindly see the whole scheme of this Constitution, it will appear that these fundamental rights are of such a nature that they curtail the rights of the Executive as well as the Legislature. The Legislature as well as the Executive cannot temper with these rights, and in these rights, in my own humble opinion, resides the sovereignty of the common man. As long as these rights are enforced, every man is safe from every kind of tyranny. Therefore, I attach the greatest value to these Fundamental Rights. But now that these new provisions are there, we do not know how these rights will be worked. It is true that the Supreme Court has been invested with the jurisdiction to enforce these rights. Yet we have not yet determined how and in what manner the Supreme Court shall give effect to these rights. These rights are of a very peculiar and a very imperative character, and I do not know in regard to the jurisdiction of the other courts whether in regard to stamps or writs, etc., what course will be adopted by the Supreme Court. But the Supreme Court has been given power under article 25 to enforce these rights. As a matter of fact, what is given as an absolute right here is being taken away in the shape of power being given to frame rules. The Supreme Court alone should have the power to frame these rules. If this power is vested in the Legislature or the approval of the President is made indispensable, I am afraid that it is fundamental to tampering with these Fundamental Rights.

Now, Sir, we know that an attempt has been made by the Drafting Committee in the later stages to tamper with these Fundamental Rights. Right 16 has been taken away. Right 15 has been truncated and in regard to adaptation, power is taken which takes away from the efficacy of these Rights. What is important is, when the provisions relating to these rights have been passed, in the third reading we do not want to have such a drastic provision. These rights should be maintained in their original purity and in the Supreme Court there should be no other power which can take away these rights. There the House will see that what I wanted in my original amendment, 109A, is now given to us. I want that the Supreme Court alone should have the power to make these rules for regulating the method and manner of the enforcement of these rights and therefore I seek to take away sub-clause (c) from clause (1) and add another separate clause (2), so that the Supreme Court alone in regard to the matters referred to in Part I, may have the power to regulate the practice and

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procedure of the appropriate proceedings mentioned in article 25 which guarantees these fundamental rights.

Mr. President : Does any one wish to say anything on this article? Then we shall pass on to article 148. Amendment No. 312, Mr. R. Das.

Shri B. Das : I am not moving it.

Shri Raj Bahadur : I am also not moving it.

Mr. President : Shrimati Durgabai. She is not present. Then amendment No. 313, Mr. B. Das.

Shri B. Das : Sir, I move this joint amendment which stands in my name and in the name of my Friend, Mr. Raj Bahadur. I beg to move :

“That in clause (5) of article 148, for the words ‘persons serving in the office’ the words ‘members of the staff’ be substituted.”

This is not my own amendment, this is what the House did pass after great deal of discussion and which the Drafting Committee, by some inadvertence perhaps, wanted to reduce to the present position. My grounds are the same as my Friend, Pandit Thakur Das Bhargava, has just now advanced about the status and dignity of the Supreme Court Judges. If we have to maintain the sovereign Government of India, we have to see that the Supreme Court, the Auditor-General and the Federal Public Service Commission are not interfered with in any shape or manner by the permanent executive. The House took considerable time in discussing these articles—old articles 124 and 125, which have now become Nos. 148 and 149. The House determined that the Auditor-General should maintain the highest dignity of financial integrity by audit control and that there should be no interference by the permanent executive in any shape or manner in exercising the authority of the Auditor-General regarding the audit control of public finances of the Government of India.

We businessmen who are accustomed to business finance sometimes find that Boards of Directors of companies try to exercise influence over the auditors and sometimes wrong reports are published. That practice should not come into vogue in the Government of India. Unfortunately, under foreign rule, that practice was in vogue from 1921 up to 1947—only two years ago. The Auditor-General became almost a nonentity. There was no audit of public finances. The former British rulers even decided that unless the Auditor-General or members of his staff like the Accountant-General or the Director of Audit, agree with the spending authority such as the Secretary of the Department or the executive head of the department, the financial irregularity would not be reported to the Public Accounts Committee or Parliament. This thing happened some time in 1927 and that practice was very much in evidence during the second war. In order that a similar practice may not continue we wanted that the high status and dignity of the Auditor-General should be maintained. Therefore we do desire the House to pass this amendment substituting the words “members of the staff” in article 148(5) whereby every Accountant-General, every first class Accounts Officer is not subjected, for his promotion, to the sweet will of any departmental head or executive head of a spending department. I have been assured by the Drafting Committee that they will accept the amendment which I have just moved. Sir, I do not wish to speak any further on this issue.

Mr. President : Shrimati G. Durgabai, amendment No. 314. She is not here. No. 315, Mr. Das.

Shri B. Das : I am not moving it.

Mr. President : No. 316.

Shri Raj Bahadur : Sir, I am not moving it. But I want to speak on amendment No. 313.

It is obvious that by the very nature of the duties and office of the Auditor General, this officer must be quite independent of the executive. As a matter of fact, his position is somewhat analogous to the position of the Chief Justice of the Supreme Court. He is the custodian, if I may say so, the *chowkidar* of our finances. He stands between the executive and the taxpayer. It is he who can successfully prevent our finances from getting into any sort of corruption or debacle.

Sir, I would simply add this much to the observations made by the previous speaker that it has been a painful experience to those of us who have happened to be on the Public Accounts Committee that during the course of 1945 and 1946 or, should I say, prior to partition and independence there have been such serious defects and irregularities in the accounts of the country that we have come to the conclusion that in the best interest of the nation this officer must be completely independent of the executive. I would, in all humility suggest that he should be absolutely free from the control of the executive. I had tabled an amendment No. 312, that even his "allowances" apart from his salary should be decided not by the President or by the Government but by Parliament. We find that in the case of the judges of the Supreme Court, their salaries and allowances are not in the gift of the Government but are constitutional matters. I would like to go a step further and say that it should not have been left to the discretion of even the Parliament, and the Constitution itself should have provided for it, because it would be in the interests of the nation if this officer is made completely independent. At any rate, there should be no wall or screen between the Legislature and this officer.

In case he has to function effectively and properly, his staff also should be under him. If the members of his staff are placed under the control of the Cabinet or the executive and have got to look for their promotions and for their careers towards the Ministers, it is obvious that the Auditor-General would not be able to exercise an effective control over the members of his staff. It was therefore a sort of an unpleasant surprise when we found in the revised draft that the words "members of the staff" had been changed to "persons serving in his office", thereby restricting and limiting the control of the Auditor-General upon those persons who happen to serve at a given time in his Department as a whole. It was thought proper that the original words which were approved of by this Assembly during the previous stages should be retained. Hence this amendment.

Another point on which I want to lay some stress is that because the Auditor General happens to be one of the highest officials who hold a sacred trust of the people, it has been made incumbent on him that after having served his term of office he cannot be absorbed or employed on any other job in the Government. When that office has been placed so high, it is only meet and proper that the staff also is entirely controlled by the same office. With these words I commend this amendment for the acceptance of the House.

Mr. President : Article No. 154, Mr. Kamath.

Shri H. V. Kamath : Sir, these amendments are identical with the amendments moved earlier in the morning and I leave them along with the morning ones for the consideration of the Drafting Committee.

Mr. President : So, I, take both 320 and 321 as not moved.

Then article 162, amendment No. 324 is a similar amendment.

Mr. Naziruddin Ahmad : Yes, Sir.

Mr. President : Then amendment Nos. 328 and 329, Mr. Kamath-article 164. Amendment No. 328 does not arise. Mr. Kamath You may move amendment No. 329.

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

“That in the proviso to clause (1) of article 164 for the words ‘Koshal Vidarbh’ the words ‘Madhya Pradesh’ be substituted.”

Shri T. T. Krishnamachari : May I suggest to the honourable Member that he may move this when we come to the Schedule? And when we accept that amendment, the consequential change may be made here as well.

Shri H. V. Kamath : Very well.

Mr. President : There are three amendments of which notice has been given by Sri A. V. Thakkar, namely amendments 329A, 330 and 331. The honourable Member is not here; so we may go to Article 166. (Amendment No. 332).

Prof. Shibban Lal Saksena : My amendment *(No. 332) may be taken as formally moved.

Mr. President : In regard to *333, *334 and *335, similar amendments have been moved in regard to the Central Government. I shall, therefore, take them as formally moved. It is hardly worthwhile moving 336 to 339. Let us, therefore, take up 340 and 341 of Mr. Kamath.

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

“That in clause (1) of article 172, after the words ‘no longer’ a comma be inserted.”

“That in clause (2) of article 172, for the word ‘possible’ the word ‘practicable’ be substituted. “

As regards the first, as far as my meagre knowledge of English tells me, according to the rules or syntax, a comma is indicated after the word “longer.”

As regards the second amendment (No. 341), I feel that the word “practicable” is more appropriate in this context than the word “possible.” I think, in the former draft as agreed to by the Assembly at the consideration stage, the word used was “may be.” But as between “possible”, and “practicable” there is a fine distinction which will not escape the notice of the honourable Members of this House. Suppose, for instance, there are 32 members in the Legislative Council of a State. “As nearly as practicable one-third” will definitely mean eleven. On the other hand “possible” will admit of some ambiguity, because there is nothing that is not possible. For that matter everything can be made possible in this world, while “practicable” will have some relation to reality. We are here dealing with realities, and the word “practicable” will ‘be preferable to the word “possible” for conveying the precise sense of this clause of the article.

*332. “That clause (3) of article 166, be deleted.”

*333. “That in clause (3) of article 166, for the word ‘Governor’ where it occurs for the first time, the word ‘Premir’ be substituted.”

*334. “That in clause (3) or article 166, for the words ‘more convenient’ the word ‘efficient’ be substituted.”

*335. “That in clause (3) of article 166, the words ‘in so far as it is not business with respect to which the Governor is by or under this Constitution required to action his discretion’ be deleted.”

Mr. President. Amendments *343, *344, *345 and *346, I shall take as moved. Let us now take up Article 189 (amendment 347).

Shri H. V. Kamath : In regard to *347, I would like to make one observation. Sir, it is understandable that for a big assembly like Parliament a quorum of one-tenth of its strength may be fixed. But if this is extended to the States, it may, at times lead to ridiculous results. There are at present States where the lower House consists of perhaps one hundred or one-hundred and twenty members, and these are to continue till the New Constitution commences and they are reconstituted after the General Elections. For instance, the C.P. and Berar Assembly now consists of about 120 members. If the quorum is fixed at one tenth of its strength, it would mean that twelve members would be sufficient to pass any legislation. The argument has been trotted out that the quorum of the House of Commons is only one-fifteenth. It is understandable because the House has a strength of six-hundred members. But in the case of the Mysore Assembly, for instance, which will have a strength of, say, 70 members, the quorum would be seven: we are of course providing that if shall not be less than ten. Rather than take it to such a farcical extent, let us say, 'finis' to democracy and go home.

Sir, I personally feel that for legislatures which have a small strength of, say 60 to 120 members, we should fix the quorum at one-fifth or one-sixth, and not make ourselves the laughing stock of the world.

Shri R. K. Sidhwa : Sir, my amendment to article 189 reads thus:

"That in clause 3 of article 189 for the word 'ten' and 'one-tenth' the words 'twenty' and 'one-eighth' be substituted respectively."

My arguments in support of this are the same as those I put forward in connection with the question of quorum for the Union Parliament. I am not at all in favour of the arguments put forward by my Friend, Mr. Kapoor. On the contrary, it has to be remembered that the future Parliament will have to sit for at least nine months in the year. If members have other work to do, let them attend to it and not monopolise the seats in the Assembly and imperfectly do the work entrusted to them by the people. I, therefore, feel that after the next elections to Parliament, the Members who come here must confine themselves to their parliamentary work only. If they really want to do other work, they may do so, but let them not monopolise the parliamentary membership and also other political activities. It is high time that we decide this. At this juncture when we have an opportunity to frame the Constitution, especially this Part. As my friend said, I do not want 500 members to be present all the time. I am saying that at least one-eighth should be present, which would mean only 20.

*343. "That in clause (2) of article 181 for the words 'and shall, notwithstanding anything in article 189, be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings but not in the case of equality of votes' the words 'but, notwithstanding anything in article 189, shall not be entitled to vote on such resolution or on any matter during such proceedings' be substituted."

*344. "That in clause (2) of article 181, for the words and figure 'anything in article 189' the words and figure 'anything contained in article 189' be substituted."

345. "That in clause (2) of article 185, for the words 'and shall, notwithstanding any, thing in article 189, be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings but not in the case of equality of votes' the words 'but, notwithstanding anything in article 189, shall not be entitled to vote on such resolution or on any matter during such proceedings' be substituted".

*346. "That in clause (2) of article 185, for the words and figure anything in article 189' the words and figure 'anything contained in article 189 be substituted"

*347. "That in the second paragraph of clause (3) of article 189, for the words. 'The quorum shall. until the Legislature of the State by law otherwise provides' the words 'Until the Legislature of the State by law otherwise provides, the quorum shall be substituted."

Shri Mahavir Tyagi : Then the House will be composed of unemployed men only.

Shri R. K. Sidhwa : I am saying twenty. Do they not want twenty for the quorum? When the question of voting comes, the House should see that the Drafting committee's proposition is voted down and what the House decided on the last occasion is accepted.

I then move my next amendment, *viz.*

"That at the end of clause (1) of article 222, the following words be added:

'only when urgency arises'."

A judge should be transferred only when urgency arises.

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

"That clause (2) of article 222 be deleted".

This clause empowers the President to fix compensatory allowance for a judge of a High Court on his transfer from one State to another. I think it will be a wise rule for us to lay down that we shall not deviate from the provisions we have already made in the Constitution with regard to salaries and allowances of High Court Judges. There should be absolute uniformity in regard to this matter throughout the whole of India. That will conduce, though in a very small way, to the development of a united national sense throughout the country. If we make invidious distinctions between the salaries and allowances of a High court Judge in one State and those of a High Court Judge in another State it will lead to somewhat vicious results which I for one would not countenance or encourage. A High Court Judge whether in Madras or Bombay or the United Provinces should draw the same salary and allowances fixed for him in the Constitution or by Parliament. There is no need, in my view, to give him any compensatory allowance when a four figure salary is fixed for him in the Schedule. I do not see any reason why when he is transferred he should get compensatory allowance in addition to his Rs. 3,000 or 4,000. The judges and all our public servants are going to be good patriots and will not claim any sort of allowances when they are, in the public interest, transferred from one State to another. The salaries and allowances already drawn by them ought to suffice. I commend my amendment to the House.

Dr. P. S. Deshmukh : I support with as much strength as I can command, the arguments advanced by my Friend, Mr. Kamath, but on a different and an additional ground in favour of the deletion of this sub-clause. In our desire to, protect the interests of the Judges I am afraid we are overdoing things. We have already made detailed provisions with regard to their right to leave, allowances, pensions and other things. We should not overburden our Constitution with so many and such details. If there is any necessity of granting any more allowances I do not think there is any constitutional difficulty in the way of the President granting the same or Parliament sanctioning it in the case of the Judges. I think this provision is absolutely unnecessary and should be deleted.

Pandit Thakur Das Bhargava : Sir, I am not moving my amendment No. 355 to article 224.

Shri H. V. Kamath : I have already moved an amendment similar to amendment No. 356 I am not, therefore, moving amendment No. 356.

Pandit Thakur Das Bhargava : I am not moving amendment No. 377. I wish to move amendment No. 383 to article 302.

I beg to move:

“That in article 302, for the words ‘as may be required in the public interest’ the words ‘as may be required in the general public interest’ be substituted.”

or, alternatively

“That in article 302, after the words ‘may by law’ the words enacted by virtue of power conferred by the Constitution” be inserted.”

If you will kindly look at article 302, you will be pleased to find that after the words “Parliament-may by law” there are some (lots and these dots represent in the second reading the following words—

‘enacted by virtue of the power conferred by the Constitution.’”

Now, this article 302 and the other articles 301, 303, etc. relate to trade, commence and intercourse within the territory of India. As a matter of fact originally there was a section in the Fundamental Rights which said that trade, commerce and intercourse shall be free in the whole of India. That article has been taken away and some other provisions had been enacted. These articles 303, etc. also existed in the original provisions but we understood that they were subject to article 16. Now, it so appears that article .302 seeks to give power to Parliament to impose restrictions on the freedom of trade, etc. Now, if you will kindly *see* article 19 (g) which we have already dealt with, it says—

“All citizens shall have the right to practise any profession or to carry on any occupation trade or business.”

And the restrictions which could be imposed are given in clause (6). It says—

“Nothing in sub-clause (g) of the said clause shall effect the operation of any existing law in so far as it imposes or prevents the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by this section..”

My submission is that those fundamental rights as a matter of fact constitute the minimum and fundamentally characteristic rights of any person living in India. Every inhabitant of India has got the right to trade in any part of India as an incident of his citizenship. This is only restricted by clause (6), whereas according to article 302 if the public interests require—and not the general public interests—then also restrictions could be put by Parliament. This is the difference between the two. What is quite clear in article 19 and what has been given there as Fundamental Rights is being taken away by article 302 when these words “in the public interests” are substituted. I do not want to take the time of the House in explaining the difference. The words used are “public interest” and not “General public- interest”. Public interests may be sectional interests inherent in State subjects but general public interest denotes the interests of the whole general interests of Indians as such.

The Honourable Shri K. Santhanam : This particular amendment does not arise from any amendment moved by the Drafting Committee, and cannot be admitted under our rules.

Mr. President : I think you are right.

Pandit Thakur Das Bhargava : You may kindly hear me before deciding the matter. There are two amendments contained in No. 383, ‘either add the words “enacted by virtue of the powers conferred by the Constitution” as this power is conferred by article 19(6) or you put in the words “in the general public interest”. These amendments are as a matter of fact the same. There is no difference between the two. If these words are there, it means that this is subject to article 19. Therefore, I submit that either these words “enacted by virtue of the powers conferred by the Constitution” may be restored in their original form or the words

[Pandit Thakur Das Bhargava]

“general public interest” may be put in. I should think that when we have passed article 19, there can be no other article which is in abrogation of the article which we have already passed. There is an inconsistency between the two and I beg the Drafting Committee and the House to consider this inconsistency and remove it.

Mr. President : Your argument is that the word “general” represents the same thing as the words which have been omitted. Either add the word “general” or restore the words which have been omitted.

Amendment No. 384.

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

“That in the proviso to article 309 the words “or such person as he may direct”, wherever they occur, be deleted.”

The House will see that the proviso to article 309 empowers the President in the case of the Union services and the Governor or the Rajpramukh in the case of the States services to make rules regarding their recruitment, their conditions of service and similar matters pending provision by Parliament or the State legislature, whichever may be the case, in this regard. I see no point in the amendment recommended by the Drafting Committee. The amendment is to the effect that not the President or the Governor or the Rajpramukh alone is competent but also such person as he may direct. This amendment to my mind is simply puerile. This morning when we considered an article with regard to the executive authority, we found that the executive power of the Union shall be exercised by the President either directly or through officers subordinate to him. It follows that even if it is not exercised by him directly, it can be exercised by officers subordinate to him. In this regard also the rule-making powers can be exercised by him or by persons authorised by him. I do not know why the Drafting Committee thinks that it is necessary to specify that it can be exercised by him or by such person as he may direct. Throughout the Constitution we have made it clear that whenever the President acts, he does not act on his-own but acts on the advice of his Cabinet, and may also delegate his authority to somebody else. These words are absolutely redundant, unnecessary and pointless, without any purpose, and therefore I suggest that these words ought to be inserted “or such person as he may direct” in the case of the President as well as in the case of the Governor and the Rajpramukh should be deleted, because it is clear beyond any shadow of doubt that wherever the Governor or the Rajpramukh or the President is mentioned, he is not mentioned in his personal capacity but as a symbol of the executive authority of the Union or the State. Therefore I commend my amendment No. 384 to the House for its serious consideration.

Dr. P. S. Deshmukh : Mr. President, Sir, I once again find myself in complete agreement with the argument advanced by my honourable Friend, Mr. Kamath, we either give this power to the President or we do not. If we think that he will not be in a position to cope with the responsibilities in this respect because they are too detailed or too insignificant and it would be necessary for him to delegate these powers to somebody else, let us put, that somebody else here rather than put the President and then, allow him to delegate this authority to somebody else. In fact, Sir, I totally disagree that the importance that has all along been attached to the protection of the interests of the services in the Constitution. I for one consider it a reflection of the days of the Secretary, of State when he was the father of all the covenanted services serving in any part of the world. I think this is also a reflection of the idea that the services are

such an important part of the country that it is necessary that nobody else except the President shall interfere with their terms of appointment, etc. Sir, I think that either the power may be kept with the President although I would much rather that it should be delegated to somebody else; or the government of that particular State, whether of the Union or the State should be competent to do so or the President should be taken out altogether; but if we want to make of a President a sort of a Secretary of State in our Constitution, then, let the President remain without stating that we would have the power of delegation of this authority to any one. In fact the President does not mean that in every case he acts himself and personally. In most cases he will be acting through someone else. There will be notifications that the President is pleased to order so and so but actually it will probably be one of his under-graduate stenographers who will draft the notification in the name of the President. (*Laughter*).

(Amendment No. 387 was not moved.)

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

“That in clause (3) of article 311 for the words “reasonably practicable to give to any person an opportunity” the words ‘practicable to give any person a reasonable opportunity’ be substituted.”

If my honourable colleagues will turn for a moment to clause (2) of this article they will see that the language employed in that clause is about “reasonable opportunity” being given to the person as aforesaid, etc., that is to say, that unless a person is given a reasonable opportunity to show cause, no action can be taken against him but clause (3) introduces a slight change and we find here the opportunity is no longer “reasonable” but the practicability is made reasonable. That will, in my humble judgment, make a very appreciable difference to the means of the clause. If the House accepts my amendment then the opportunity to be given will have to be a reasonable opportunity. My honourable Friend, Pandit Thakur Das Bhargava, who emphasized the meaning of the word “reasonable” so very forcibly and vigorously with regard to the old article 13 will agree with me about the word ‘reasonable’ in this connection because it may be held that where the opportunity is not sought to be given by the person taking action against an officer concerned, if it was not reasonably practicable. ‘Practicable’ means absolutely practicable. That is what I believe Dr. Ambedkar had in view when he moved this article at the consideration stage, and it means that when the officer is not to be found or his whereabouts are not known it is not possible, to give him any opportunity to show cause and only in that eventuality, in that contingency can an opportunity be denied to the officer concerned. Now what we seek to do in this amendment sought to be moved by the Drafting Committee is that if the officer holds that it is not reasonably practicable to give an opportunity that means to say it may be Practicable, but it may not be reasonably practicable. Therein, lies the difference which my honourable Colleagues, I am sure, will understand and appreciate. We must definitely lay down that only when it is not practicable to give to the officer concerned a reasonable opportunity, the superior officer’s decision shall be final in this regard. I feel that the Drafting Committee has taken uncalled-for liberties with the draft as approved by the Assembly in the last session and I feel that we must modify it so as to convey the sense of this clause exactly and completely. I commend my amendment No. 388 to the House for its consideration.

Mr. President : Amendment No. 389.

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

“That in the proviso to clause (1) of article 316, for the words ‘under an Indian State the word in an Indian State’ be substituted.”

I do not presume to be a master, an expert or authority on the English language and I move it for what it is worth. I hope the Member of the Drafting Committee who are far wiser than myself in this matter will have due regard to the meaning that they seek to convey in this proviso and in the phrase held

[Shri H. V. Kamath]

office under an Indian state. Of course held office under the crown is a constitutional term, but I have not heard this phrase 'held office under an Indian State'. It should be either "under the Government of an Indian State" or "in an Indian State".

Shri T. T. Krishnamachari : May I tell my honourable Friend that it is contemplated to change, with the permission of the House. the words to 'under the Government of an Indian State'.

Shri H. V. Kamath : I am glad that my honourable Friend Mr. T. T. Krishnamachari, has seen his way to accepting this suggestion of mine and so I do not propose to press this amendment, Sir.

Mr. President : I do not think amendment No. 392 arises at all.

Shri T. T. Krishnamachari : May I suggest to the honourable Member to see if it finds a place in the corrigenda? The two commas are there.

An Honourable Member : The Drafting Committee have stolen the amendment.

Shri H. V. Kamath : The word 'stolen' may be unparliamentary; they have plagiarised the amendment. Amendment No. 392 is also mere punctuation and I leave it to the punctuating sense of the Drafting Committee.

Sir, I move:

"That in clause (c) of article 319, for the words 'other than a Joint Commission' the words or as the 'Chairman of a Joint Commission' be substituted."

This article 319 refers to prohibition as to the holding of office by members of the Public Service Commission on their ceasing to be such members, that is members of the Commission. Certain restrictions have been laid down in this article with regard to members of the Public Service Commission when they cease to hold office either as Chairman or as member of a particular Public Service Commission. Clause (c) of this article refers to the restrictions laid upon a member other than the Chairman of the Union Public- Service Commission This goes on to say: "such a member on ceasing to hold office shall be eligible for appointment as the Chairman of a State Public Service Commission other than a Joint Commission." I see no reason why this taboo should be there, with regard to a Joint Commission. A person has ceased to be a member of the Union Commission. Just as there is no prohibition with regard to a State Commission, so it follows logically, at any rate to my mind, that there should be no prohibition with regard to his appointment as a member of a Joint Commission. The only prohibitions should be with regard to his membership of the Union Public Service Commission or Chairmanship of the Union Commission; but neither with regard to the State Commission nor with regard to a Joint Commission should there be any prohibition. I therefore move amendment No. 393.

Mr. President : We proceed to article 320.

Shri H. V. Kamath : This amendment, Mr. T. T. Krishnamachari tells us, has been accepted by the Drafting Committee.

Shri T. T. Krishnamachari : If my honourable Friend will move amendments 394 and 395, first alternative, that more or less finds a repetition here—we will accept his amendments.

Shri H. V. Kamath : I am happy; I move amendments 394 and 395, first alternative.

"That in sub-clause (d) of clause (3) of article 320, for the words 'Under an Indian the State the words 'under the Government of an Indian State' be substituted."

"That in sub-clause (e) of Clause (3) of article 320, for the words 'under an Indian State', words under the Government of an Indian State' be substituted."

Pandit Thakur Das Bhargava : Sir, I move:

"That in clause (4) of article 320, the words "the members of the Scheduled Castes or Scheduled Tribes or' be deleted."

If you will kindly refer to article 320, clause (4) it would appear that it says :

“Nothing in clause (3) shall require a Public Service Commission to be consulted as respects the manner in which appointments and posts are to be reserved in favour of the members of the Scheduled Castes or Scheduled Tribes or any backward class of citizens in the Union or States”. These words “members of the Scheduled Castes or Scheduled Tribes or” have been added newly. Previously, these words did not exist. Now, so far as reservation is concerned, we find mention of this reservation in article 16, where it is said in clause (1) “There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State,” and in clause (4) “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 which, in the opinion of the State, is not adequately represented in the Services under the States.” A perusal of these two sections would establish that as a matter of fact, there is only provision for this reservation in respect of the backward class of citizens which in the opinion of the State is not adequately represented in the services of the State. There is absolutely no provision for reservation so far as members of the Scheduled Castes and Scheduled Tribes are concerned. The safeguard given by law to this class is contained in articles 335 which says: “The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State.” Therefore, one thing is absolutely clear, that no reservation was meant to be made for the members of the Scheduled Castes or Scheduled Tribes as such. I remember that in the Sub-Committee of the Minorities Committee, this matter came up and then we decided that there should be no reservation at all. Now, as if by the back-door, by smuggling, this reservation for the Scheduled Castes and Scheduled Tribes is being inserted in clause (4) of article 320. My submission is when there is a positive command of the Constitution to the members of the Public Service Commission which they must obey that the claims of the members of the Scheduled Castes and Scheduled Tribes must be considered consistently with the maintenance of efficiency of administration, this provision would be useless, and also, in a manner, I should say, this takes away the effect of article 335 to an extent. I am therefore, anxious that so far as the Scheduled Castes and Scheduled Tribes are concerned, their claims must be considered with regard to all appointments and not only with regard to reserved appointments. Because, if they are reserved, it means that the claims of other people for these appointments will not be considered, and their claims only will be considered. The likelihood is that their claims will be confined only to the reserved posts and in regard to other posts, their claims will not be considered.

Now, as the House knows, the provision contained in article 16 clause (4) is a sort of a negative provision to counterpoise the equality of opportunity for all citizens, some of whom are very much developed and others not so developed, and provision is made that the State is not prevented from making any provision for the reservation of appointments or posts. I do not know whether the State is going to reserve any posts. Supposing no posts are reserved, this provision will neither benefit the backward classes nor any other class. When reservation of posts has not been decided by this House, I do not think we are justified in having in this clause (4) a contingency for which reservation could be made. When the House has decided once for all that no reservation is to be made, then these words would give rise to the impression that reservation is possible.

I am anxious that whatever rights have been given by the Constitution they should be enjoyed by the members of the Scheduled Castes and Scheduled

[Pandit Thakur Das Bhargava]

Tribes and no more or no less In regard to article 335, I beg to submit that this is a very positive and extensive provision. If I were a member of the Public Service Commission, I would like to give every post to the members of the Scheduled Castes and Scheduled Tribes consistently with the maintenance of efficiency of administration for at least five or ten years so that they may have been.

Shri T. T. Krishnamachari. Will the honourable Member please say how article 335 could be implemented?

Pandit Thakur Das Bhargava. Can it only be implemented by reservation? If that is so, why did we not so decide? We decided against that; we were against that, The 'Drafting Committee is smuggling in some provision which is against the verdict of the Assembly. Why was this point not raised before? I think reservation is entirely a wrong thing. Under article 335, their claims can certainly be considered. After all, 'a Commission is to be appointed and welfare officers are going to be appointed. The President has to see whether the rights of these communities are safeguarded. We are all here to see that the rights of these communities will be safeguarded. I have no reason to believe that article 335 will not, be implemented. It -must be implemented; but this is not the way to implement it.

Shri V. I. Muniswamy Pillay (Madras: General): Mr. President Sir, I think it is an irony of fate that hurdles of this sort are sought to be placed even in regard to the meagre facilities that have, been adopted in this House. I do not agree with my honourable Friend Pandit Thakur Das Bhargava's amendment since the implementation of article 335, which was formerly article 296, is sought in this clause (4) of article 320. Sir, if I were to tell him, the backward communities which lie referred to is not a comprehensive term or adopted by all-the provincial Governments in India. In Madras, backward communities refer to certain sections, of the people and the Scheduled Castes and Scheduled Tribes form a separate class from the, backward communities. If it is the idea of my enlightened friend that the backward classes alone must remain in this Constitution for any reservation, the Scheduled Castes and Scheduled Tribes will not find reservation for appointments either in Madras or in some other provinces. So, I feel what the Drafting Committee has done for implementing and also making it clear what obtains in article 335 in clause (4) of article 320 is correct. My friend was saying that no reservation was made: but if he studies article 335, there is reservation services for Scheduled Tribes and Scheduled Castes. This clause (4) gives power of consultation with the Public Service Commission which is ultimately the authority that will be advising the Governors and the President of the Union on what basis the members of Scheduled Castes or Tribes are to be taken in service. So I feel very strongly that if my honourable Friend's amendment is accepted, it will mean that the Scheduled Castes or Tribes will not count for reservation in the So I oppose this amendment.

Shri Mahavir Tyagi : Sir, I propose that this may be held over. It is very controversial.

Mr. President : I would allow discussion of this. Those who wish to speak may speak now. Voting will be taken at the end, of course.

Dr. P. S. Deshmukh : I am glad the importance of this article is being appreciated by many honourable Members. It is certainly very very important. I for one do not oppose the changes made by the Drafting Committee in this article, but I would appeal to the Members and to the representatives of Scheduled Castes and Tribes that they should not also object to the insertion of the words "backward

classes" in article 335. It was very unjustly and unfairly omitted from that article and it was no gain to anybody, especially to Members representing the Scheduled Castes or Tribes. Just as in this article 320 we propose to add the words 'the Members of the Scheduled Castes and Scheduled Tribes and retain the words, 'Backward classes of citizens', similarly the words 'backward classes' should be added to article 335. That will be entirely fair and consistent and if that is accepted, I would strongly oppose the amendment that has been just moved. If, for the purpose of even carrying greater assurance to Members of Scheduled Classes, it is necessary to mention certain safeguards specifically, I do not think we should fight shy of it. We are trying too much to ask people to have faith in our liberal, intentions and generous motives but in many respects it is better to come down to practical politics and embody what we mean in a concrete shape, understandable by the ordinary citizen. If for that purpose the Drafting Committee has suggested the addition of the two classes of Communities in article 320, I for one would not quarrel with it. But I would appeal to the House and to everybody that the words "backward classes" should be added to article 335. There is a little history so far as this article is concerned and the omission is, I believe, as accidental as some other things that have happened in regard to the provisions in the Constitution. Backward classes were omitted from article 335 in this way. The omission was never contemplated. Mr. Munshi had attempted amendments of the proposed article several times, but in none of them "backward classes" was omitted. But suddenly at a very late stage, when unfortunately I happened to be out of Delhi, I discovered that these words happen to be omitted. The best solution which is acceptable to everybody is that the proposed addition to article 320 should stay and honourable Members of this House should insist that the words 'backward classes' should be added to article 335 and the *status quo* maintained which was deliberate, intentional and which was really the demand of everybody, especially of Members representing the backward classes and also, if I may say so, of the representatives of the Scheduled Castes and Tribes. There has never been any conflict of interests between the various groups of communities and I hope the Scheduled Classes and the Scheduled Tribes will not bring about this conflict which will be of evil consequences to the whole nation. I would, therefore, appeal that whatever has been embodied in article 320 should now stay and in article 335 the word 'backward . . .

Mr. President : There is no amendment for 335.

Dr. P. S. Deshmukh : I have given an amendment to that effect somewhat late. I was away from home and I was not able to table it in time but as soon as I got it, I sent the amendment in. I would beg of you that this amendment of mine may be permitted. It is No. 530. I have said "that in article 335 after the word 'members, the words backward classes' be inserted."

Shri H. J. Khandekar (C.P. & Berar: General): Mr. president, Sir, I stand here to oppose the amendment moved by my Friend, Mr. Thakur Das Bhargava. The draft that has been put forward by the Drafting Committee is with certain reasons. Because this House has adopted article 335 last time as article 296 and in order to give effect to that article, this article 324 has been submitted to the House. According to article 335 the seats have been reserved for members of the Scheduled Castes in services and posts, but that article does not give power to the Public Service Commission or the Federal Public Service Commission. We had to bring that article into effect and for this purpose this amendment has been moved by the Drafting Committee and then only the F.P.S.C or P.S.C. of the States will Consider the claims of the Scheduled Caste. I am very sorry to say that such amendments as have been moved by Shri Bhargava regarding the Scheduled Castes are being moved at this stage to bury down the Harijans. There are certain people in the country from the caste Hindus—I am not of course criticising them—but I would like to tell certain facts that they do not want to give facilities to us

[Shri H. J. Khandekar]

certain members of the Hindu society will only be satisfied when the Scheduled Castes and Scheduled Tribes are buried. I think, Sir, these amendments are brought with these motives. I, therefore, feel very sorry and pity for such caste Hindu friends. With these words, I oppose the amendment moved by my Friend, Mr. Bhargava.

Shri R. K. Sidhwa : Mr. President, all along during the discussions and start of this Constitution I have held the view that if anybody deserves protection of special rights or privileges, it is the Scheduled Castes only and I hold today the same view that none but the Scheduled Castes should have a special right for the reasons that I frequently stated that we have done certain injustice to that class and for the purpose of undoing that injustice, we specially gave them this protection. I have all along extended my support to this on this ground. I am not in favour of giving any protection to the so-called backward classes. Backward classes were introduced by the British Government, and I do not want that blot to be continued in this Constitution. Backward classes exist in all communities, and in the directive policy and the fundamental policy we have decided that within ten years everybody shall be made literate, and with literacy nobody will remain backward. I would like to know what is the meaning of "backward class".

An Honourable Member : Those not in service.

Shri R. K. Sidhwa : With education such service also will automatically come in. When proper education has been provided for, automatically their rights to entry into the services will also come in. Therefore, I do not approve of my Friend Dr. Deshmukh's proposal to introduce the words "backward class" in article 313 which we have after full consideration decided should not be there. Therefore, I say that the amendment of the Drafting Committee is a perfectly correct one and that is the only amendment which we should support, without any other amendment. I do not think any one in this House would take away the powers or the rights which we have given to the Scheduled Castes. My Friend, Pandit Thakur Das Bhargava, said—I do not think he means it—that the word should be deleted. I strongly oppose it. Why should it be deleted when we have fundamentally accepted it in our Constitution. Therefore, I support the amendment of the Drafting Committee and I oppose any kind of amendment. Although the words "Backward class" are there, I am obliged to reluctantly accept it, and if I had my way, I would have said that there shall be no such thing as "backward classes". Within the next five years, I would make them all literate, so that they may be able to occupy any place in our society. We have to undo what has been done during the past 150 years, and we have to undo it as early as possible. Sir, with these words I strongly support the Drafting Committee's amendment.

Shri Mahavir Tyagi : Sir, I do not know whether I am really right in interpreting the procedure of the third reading of such Bills. As far as I know, in the Legislative Assembly of the Province, the third reading is only.

Shri R. K. Sidhwa : This is not a third reading.

Shri Mahavir Tyagi : What reading is it then? The second reading has been finished and only such amendments as are of a consequential nature or as accrue from our past decisions are to come at this stage. If, however, matters which were closed after protracted deliberations and heated discussions, were to be raked up again at this stage, I am afraid, your time limit for the discussion and decision will be rather very unfair. Sir, my submission is that all such matters, which were once discussed and closed here, and which were also discussed among Members mutually, either in the shape of different parties or groups, and particularly such matters which were as a result of

compromise resolved as unanimous decisions, were to be reopened for discussion, I assure you, Sir, that it will take a very long time and it will not be possible for you with due fairness, to finish the discussions according to the schedule which you have kindly prescribed. I submit that the amendment under discussion was neither consequential nor was there any necessity for introducing the question of reservation of offices or posts for Scheduled Castes, here. Sir, the House has, expressed itself a number of times in the past that our people do not want any reservations for anybody. And particularly in the case of the Scheduled Castes, the House had agreed, after heated discussions, and passed article 335, as it is at present numbered, to the effect that "the claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or a State." That was quite enough and that was the last word unanimously agreed upon by the House. And the Members of the Scheduled Castes were also satisfied with this article. Why introduce the same communal virus into another article? Is not one enough? To bring it here again means raking up the old controversy again. That representation of Scheduled Castes shall be so and so, the manner of giving it shall be such and such, that the rules of giving this representation in the services or posts to the Scheduled Castes shall not be made in consultation with the Public Services and so on. All this, I say, is absolutely unnecessary, and surely it does not benefit the Scheduled Castes people at all. Ever, article 335 was a matter of controversy, and it was opposed. Some of us felt that the special reservation was forced against their wishes. But then we were told that it was only a directive article, and that it directs the policy of future Governments. The House agreed to have it only as a directive. And now you want to bring it in another article. The Constitution is in your hands and you can introduce controversial matters in any article and it will be discussed here as a basic proposal and then amendments will come in. Sir, I submit that you might kindly rule such matters as out of order. Matters once, twice and thrice discussed cannot be brought in again. How long can the House go on discussing these matters?

Shri Jaipal Singh (Bihar General): Mr. President, Sir, I feel I must come forward to congratulate the Drafting Committee for having made a point more clear than it might have been had they not introduced the amendment in clause (4) of article 320, I must confess that I have been very much surprised by the amendment that my honourable Friend, Pandit Thakur Das, Bhargava, has been pleased to place before the House. My memory is not very weak. Not many months ago, he was the one who congratulated himself and the House for atoning for what had not been done for centuries, but, now, somehow or other, he swallows his words and tries to accuse the Drafting Committee and the Scheduled Castes and the Scheduled Tribes and any other backward classes of aligning ourselves as a communal group. The hint has already been made by my predecessor just now. Sir, we are not asking for this from any communal angle. We do not want anything. If you do not want to give it, do not give it. We are not asking for it. Do not give with your right hand and take away with your left. I have said every time that it has been my privilege to come and plead for the most backward group in our country, and made it quite emphatic and quite clear that I am not here with a beggar's bowl. If you give it, give it without any mental reservations.

As far as I can see, all that the Drafting Committee has done is to elucidate what were the intentions in the Fundamental Rights and the directive principles of the Constitution. Beyond that they have not gone. My friends will be the first to admit that the Scheduled Castes and the Scheduled Tribes are among the backward classes. Well, they have already accepted in their previous speeches and the previous consideration stage that the Backward Classes have to be brought

[Shri Jaipal Singh]

up to the general level. How else can you do it unless there is some way of implementing that intention? We have had enough or words. We have had them for centuries and centuries. In this Constitution we are providing the wherewithals for materialising those intentions. You have appealed to us not to talk at length. I have no desire to do so: all that I say is be generous and mean it.

The Honourable Shri K. Santhanam : I am afraid the scope of this particular clause has been widely exaggerated by almost every speaker. It does not prescribe by itself any kind of reservation or any privilege which has not been given by the other articles of the Constitution, what all it attempts to do is to decide whether the Public Service Commissions shall have anything to do with either the reservation of the Backward Class or of the Scheduled Tribes. If by the application of article 335 such reservation becomes necessary. No one will contend that in attempting to apply 335, in considering the claims of scheduled castes, no reservations will be made. If any one comes to that conclusion that no reservation shall be made, I believe that 335 cannot be implemented to any extent. But whether in any particular service the Scheduled Castes should be represented and to what extent—all that may be a matter of argument, consideration and discretion. But to say that at no point whatsoever any reservations shall be made, is, I think, wholly inconsistent with either the letter or spirit of article 335.

Assuming that in some matters some kind of reservation will have to be made, the question here is whether it shall be done by the rules of the Public Service Commissions or by the Government directly. That is the short issue of this particular clause. It is our policy that the Public Service Commissions should be kept out of all these communal and other considerations.

Pandit Thakur Das Bhargava : May I know if the provisions of 335 are not binding upon the Public Service Commissions? They must take it into consideration.

The Honourable Shri K. Santhanam : Here the point is whether the rules to be made should be by the Public Service Commissions or by the Government. We do not want the Public Service Commissions to be brought into these matters, it only says that “nothing in clause 3 shall require the Public Services to be consulted.”

Shri Mahavir Tyagi : Why not make it clear. Was it incumbent on the Government to consult the Public Services Commission, that you want to have an exemption?

The Honourable Shri K. Santhanam : My honourable Friend, Mr. Tyagi, is altogether wrong in thinking that this is a new insertion. This is purely consequential to article 335.

Shri Mahavir Tyagi : I want to put one question. Is there any compulsion on us that we must approach the Public Service Commissions for rules?

The Honourable Shri K. Santhanam : If he reads clause (3), he will find that for all these matters, the Public Service Commissions should be consulted. Therefore, if clause (4) were not there, then the Public Service Commissions would be involved in the controversy regarding the manner in which reservations should be carried out. We do not want our Public Service Commissions to be brought in. If any reservations are to be made, that should be done purely at the discretion and judgment of either the Central or Local Government. It is only to prevent the Public Service Commissions from being brought into the controversy that clause (4) is brought in. Without it, if at any time reservations become

necessary, consultation with the Commission is also necessary and the public will begin to blame the Public Service Commissions either for the manner or the extent of the reservations. It is only to preserve the purity of the Public Service Commissions that this is inserted, and so whatever objections one may have to reservation is quite a different matter. One may contend that no Government should interpret 335 as getting them reservations. That is a matter for the Supreme Court and for anyone to argue out. It is not possible for the Drafting Committee or for this Assembly to assume that no reservations can be made under article 335 and, therefore, this preservation of the purity of the Public Service Commissions need not be undertaken. As a matter of fact, if the Drafting Committee had not put this forward they would have failed in their duty.

Pandit Hirday Nath Kunzru (United Provinces: General): Mr. President, the question before us has been discussed by those who have favoured the amendment made in clause (4) of article 320 by the Drafting Committee with reference to Article 335. I think, Sir, that we should refer to clause (4) of article 16 before we refer to any other article. It 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 which in the opinion of the State is not adequately represented in the services under the State." Under this clause, it is not necessary for the Central Government or the Government of a State to consult the Public Service Commissions with regard to the reservation of posts for any or all of the Backward Classes. The question then before us reduces itself to the proposition whether the Scheduled Castes and the Scheduled Tribes should be included among the Backward Classes or not. Now it may be said that these classes have been specially mentioned in various parts of the Constitution and that, therefore, they should not be included among the Backward Classes. It is hard for me to accept any such interpretation. The Scheduled Caste and the Scheduled Tribes have been specifically mentioned in several places because they are believed to be more backward than the classes called backward according to the official terminology of the Provincial Governments. That is the only reason, I believe, why they have been selected for special mention in several articles. It seems to me, therefore, that even if clause (4) of article 320 were not amended in the manner that it has been by the Drafting Committee, a State would not be under any compulsion to consult the Public Service Commissions with regard to the reservation of posts for the Scheduled Castes or the Scheduled Tribes. Article 335 has been referred to but that is of limited application. All that it says is that.....

Pandit Balkrishna Sharma : May I draw the attention of the Honourable Member to one point? He says the Government is not in duty bound to consult the Public Service Commission. but if he would only refer to article 320(3)(a) there he will find that the Public Service Commission should be consulted on all matters relating to the methods of recruitment to civil service and for civil posts, and this might be interpreted as involving the Public Service Commission in a sort of a controversy regarding the reservation of seats for Scheduled Castes, Scheduled Tribes and other Backward Classes. In order to avoid that contingency, "that amendment has been brought in".

Pandit Hirday Nath Kunzru : I am aware of the provisions of clause (3) but what I meant to say was that the provisions of clause (3) must be regarded as subject to the provisions of clause (4) of article 16 which embodies a fundamental 16.

The Honourable Shri K. Santhanam : It is really supplementary.

Pandit Hirday Nath Kunzru : In any case what I have tried to say is that the amendment made in clause (4) of article 320 does not confer any power on

[Pandit Hirday Nath Kunzru]

the State with regard to the reservation of posts for any Backward Class that it did not have before.

Sir, I was referring to article 335. It merely says that the claims of the members of the Scheduled Classes and the Scheduled Tribes shall be taken into consideration consistently with the maintenance of efficiency of administration, etc. It may be found on examination that it is not possible to take the claims of the members of these classes into consideration without reserving a certain proportion of posts for them. Therefore, in my opinion, the more important article that we should consider in this connection is article 16. Article 335 seems to me to be of more limited application than article 16. We may draw an inference from article 335 that the State has the power to reserve posts for the Scheduled Castes and the Backward Tribes but I think that clause (4) of article 16 lays down very clearly and in express terms that the State has the power to make reservations of appointments or posts in favour of any backward class of citizens. Even if it be held that the amendment of clause (4) of article 320 is unnecessary, it is clear that it is in accord with or that it is consequential to the power given to the State by article 16.

Mr. President : We shall continue the discussion tomorrow:

I said at one stage of the proceeding this afternoon that I would like to finish all the amendments, but since this particular article has taken more time than we anticipated I would like to extend the time for moving the other amendments

Pandit Balkrishna Sharma : Sir, in List I there are certain amendments which are also connected with the amendments that have been received in List II therefore, I believe if the amendments are not reached during the time available you will kindly allow these amendments from List I

Mr. President : We shall consider that.

The Assembly then adjourned till 10 A.M. on Tuesday, the 15th November, 1949.

CONSTITUENT ASSEMBLY OF INDIA

Tuesday, the 15th November 1949

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 Member took the Pledge and signed the Register :

Thakur Lal Singh (Bhopal State).

Mr. President : We shall now continue the discussion we were having yesterday.

Shri H. V. Kamath (C.P. & Berar: General): Sir, before we proceed to the business of the day, may I request you to be so good as to tell the House what progress has been made with regard to the election of representatives from Vindhya Pradesh and Hyderabad to the Constituent Assembly?

Mr. President : As regards Hyderabad, I am not in a position to give any information. But as regards Vindhya Pradesh, an attempt was made to form an electoral college which could elect the representatives to this House. But unfortunately, that has not found favour with the political parties there and therefore ultimately I have been compelled to agree to Members being nominated from there. They will be nominated and will be coming.

Shri H. V. Kamath : Will they take their seats here during this final session ?

Mr. President : I hope so. I have asked them to send them before the 20th.

Shri H. V. Kamath : What about Hyderabad?

Mr. President : As I said before, I am not in a position to say anything about Hyderabad.

We shall now continue the discussion.

Amendments to articles—(Contd.)

Shri T. T. Krishnamachari (Madras: General): May I mention, Sir, that the Drafting Committee met some of the Members who had tabled the amendments to article 320 yesterday and also others who were interested in it and a new amendment has been tabled to article 320 which finds a place in today's list? Its number is 559. If the House will defer discussion on this particular article and take it up when that amendment is moved, perhaps it might be more beneficial and will save time.

Mr. President : Do I understand that this form was acceptable to other Members?

Shri T. T. Krishnamachari : It was acceptable to the Members who moved be amendments and spoke yesterday. In any case, this article can be discussed when we take up that particular amendment.

Mr. President : Then we shall take it up later. We pass on to the other amendments, to article 325. Mr. Kamath may move amendment No. 397.

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

"That in article 325, for the words shall be ineligible for inclusion in any such roll or claim to be included in the words shall be excluded from or claim to be included in be substituted."

This is moved partly with a view to simplification of language of the article and partly to amend the substance of the clause as well. The amendment suggested by the Drafting Committee refers to a special electoral roll for the territorial constituency. The article as it stood in the Draft is accepted by the Assembly at the consideration stage had no reference to any special roll in any particular territorial constituency. But in this amendment this reference has been inserted. It says that no person shall be ineligible for inclusion in any general roll or claim to be included in any special electoral roll on the ground of caste, etc. The first part of it refers to inclusion in any general electoral roll for the territorial constituency and the second part refers to any special electoral roll on grounds only of religion, etc. My amendment No. 397 tries to comprise both, the ineligibility for inclusion and the claim for inclusion in simplified phraseology. The other aspect of the matter in this: We have brought in here reference to a special electoral roll which was not there in the draft of the article. In the light of this I have given notice of amendment No. 399 which with your permission, Sir, I shall move now It runs:

"That in article 325, after the words 'caste', the word 'class' be inserted."

This is necessary because there is reference in the article to a special electoral roll. Now, the special roll can include people belonging to different religions or races or castes or sex and may also include people belonging to different classes. Today, our society consists of some classes, though we are trying to create a classless society. So long as these classes are there, we have to recognise realities and made reference to classes as well. We have for instance the Zamindar class which fortunately is fast disappearing, and we have other classes also which are well known to the House. Therefore when we refer to special rolls, we should make the provision comprehensive and make reference to classes as well, so as to obviate any loopholes of whatever kind. I commend my amendments for the earnest consideration of the House.

(Pandit Thakur Das Bhargava did not move amendment No. 398).

Mr. President : Mr. Kamath may move this amendment No. 400 to article 333.

Shri H. V. Kamath : My amendment No. 400 is a verbal amendment. I leave it to the consideration of the Drafting Committee.

Mr. President : The next amendment No. 401 of Mr. Kamath to article 344.

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

"That in clause (3) of article 344, for the words ' persons belonging to the non-Hindi speaking areas' the words 'that non-Hindi speaking sections of the population' be substituted."

The House will see that this article 344 deals with the Commission and Committee of Parliament on official language which the President shall at the expiration of five years from the commencement of this Constitution and there after at the expiration of ten years from the commencement of this Constitution constitute. The Commission will be asked to report on various matters connected with the progress of the development of the official language in the Union and in the States as well. Clause (3) as it was accepted by the House at the consideration

stage says: "In making their recommendation under clause (2) of this, article, Commission shall have due regard to the industrial, cultural and scientific advancement of India and the just claims and interests of the non-Hindi speaking areas in regard to public services." The amendment that has been moved by the Drafting Committee substitutes the words "non-Hindi speaking areas" by the words "Persons belonging to the non Hindi speaking areas". But, Sir, a new article 347 has been inserted by the Drafting Committee, and that refers to a special provision relating to the language spoken by sections of the population of a State. Now, this clause (3) of article 344 relates to the interests of persons belonging to the non-Hindi speaking areas in regard to public services. Now, Sir, it is easy to say which is a Hindi speaking area and which is a non-Hindi speaking area. For instance, Bihar, the United Provinces, Delhi are definitely Hindi speaking areas, also the northern part of C. P., *i.e.*, Mahakoshal. If we leave this article as it is, that is to say, make reference only to persons belonging to those areas, I think the interests of the non-Hindi speaking sections of the population will not be adequately safeguarded, because within the Hindi speaking areas there may be people who do not speak the Hindi language, whose mother-tongue is not Hindi,—may be a linguistic minority. Everywhere, all over India, we have linguistic minorities in every province and this, as the House is very well aware, is given as an argument against the creation of linguistic provinces, because even after the creation of linguistic provinces, there will be linguistic minorities in every province. Therefore my point is that it is not adequate to say that this article should safeguard the interests of the persons belonging to non-Hindi speaking areas. What is intended is to safeguard the interests of the non-Hindi speaking sections of the population as a whole, wherever they may be found. There are a number of Madrasis in Delhi today in some of them did voice their apprehensions that if Hindi was adopted as the official language within five years or even earlier, their interests with regard to the services might be affected. Though they live in Delhi, though they live in a Hindi speaking area, they are non-Hindi speaking sections of the population. That is the distinction I want to make. Therefore if we want to say what we mean, we must make it clear, that what is sought to be safeguarded in this clause is not the interests of persons belonging to non- Hindi speaking areas but the interests of the non-Hindi speaking sections of the people. Therefore I move amendment No. 401 and command it to the House for its consideration.

Shri Mahavir Tyagi (United Provinces: General): Sir, I do not want to take much time of the House on this issue but I want only to remind the House that this language question was one of the most controversial ones and that every time it came before the House, it entailed prolonged discussions and controversies and it was at the long end that we arrived at a compromise and unanimously passed these articles about language. Now, Sir, it is highly objectionable in my opinion to add a word to or take a word from what was agreed upon by the whole House unanimously. I can understand if there were any consequential amendments introduced by the Drafting Committee but to put a new idea altogether and change the meaning of what was agreed upon is something which I would request you kindly to look into and rule out of order. This amendment of the Drafting Committee is not in consonance with the unanimous decision of the House. Previously this was 301-E. Now, according to 301-E the President was authorised only to direct that the language spoken in certain parts of a State by.

Mr. President : Mr. Tyagi, there is an amendment to restore the original so far as 301-E is concerned.

Shri Mahavir Tyagi : An official amendment?

Mr. President : Yes.

Shri Mahavir Tyagi : I need not say anything then. I thank the Drafting Committee for this. It is very good, Sir.

(Amendments Nos. 402, 403, 404, 405 were not moved.)

Mr. President : Article 365. Amendment No. 408 by Pandit Thakur Das Bhargava.

Pandit Hirday Nath Kunzru (United Provinces: General): On a point of order, Sir, Article 365 has been justified by the Drafting Committee in the report appended to the Draft Constitution as revised by it on certain grounds. It is stated there that certain articles taken together justify the language of article 365. The articles that have been referred to are 256, 257, 353, 360 and 371. I should like to refer first to articles 256 and 257.

Shri L. Krishnaswami Bharathi (Madras: General): What is the point of order?

Pandit Hirday Nath Kunzru : The point of order is that there is nothing in these articles that is as wide as article 365. Article 365, as Honourable Members will see, enables the President to declare that a situation has arisen in which the Government of the State cannot be carried on, in accordance with the provisions of this Constitution, if the Government of a State does not give effect to any directions given by the Central Executive in the exercise of any of the powers conferred on it by this Constitution. This is, Sir, a question of policy. The Drafting Committee treats it as if it were a question of fact. But a reference to articles 256 and 257 will show that while the Central Executive has been empowered to issue instructions to the Provincial Executive in certain cases, yet if there is any failure on the part of the Provincial Executive to carry out the directions of the Central Executive, that will not amount to a failure to carry on the Government of a State in accordance with the provisions of this Constitution. These questions were thoroughly considered when the various provisions of the Draft Constitution were discussed. Articles 353, 360 and 371 relate to the powers that might be exercised by the Central Executive or by Parliament in certain emergencies. They do not, therefore, bear on the question that I have raised. We are principally concerned here with articles 256 and 257 and what we have to see is whether the scope of articles 256 and 257 is the same as the scope of article 365. Is there anything in articles 256 and 257 that can enable the President to declare that the Government of a State cannot be carried on in accordance with the provisions of this Constitution, if a State Executive fails to carry out the instructions of the Central Executive? Difference of opinion may arise from time to time between the Central Government and the Provincial Governments and the Central Government may lawfully issue instructions to the Provincial Governments to act in a certain manner. It will be the duty then of the Provincial Governments to carry out those instructions, but it is going too far to say that if the Provincial Executive fails to carry out in every respect the instructions of the Central Executive or if the Central Executive feels that its instructions have not been fully carried out, then the President may declare that the Government of the State cannot be carried on in accordance with the provisions of this Constitution and may then assume to himself all the powers of Government or take such other measures as he can under this Constitution. Some honourable Members may be of opinion that this should be done but the time for making such a change has gone. The Drafting Committee has been authorised by Rule 38-R of the Rules of this Assembly.

Shri Brajeshwar Prasad (Bihar: General): Is the honourable Member raising a point of order or delivering a speech?

Mr. President : It is a point of order. I have followed the point of order.

Pandit Hirday Nath Kunzru : To make such changes as are complementary or consequential or necessary and what we have to discuss is what the word, 'necessary' means. Does it mean that if the Drafting Committee feels that the House gave a wrong decision on a question of policy then it should substitute its own judgment for that of the House or does it mean that the Drafting Committee should make such changes as are implied in certain decisions arrived at by the House but not actually provided for? I think that in this particular case, Sir, the draft of article 365 can be approved only on the supposition that the Drafting Committee can override the judgment of this House and substitute its own judgment for it. We are not concerned with seeing whether it is desirable as a question of policy or not that the Central Executive should enjoy certain powers that have not been given to it by this Constitution. All that we are concerned With at the present time is that the decision arrived at by the House on this point is carried out in a proper way.

Mr. President : As I understand the point of order which you are raising Pandit Kunzru, it is this, that this article as it is now proposed goes beyond the decisions of this House and it is not a necessary consequence of any decision which has been taken.

The Honourable Dr. B. R. Ambedkar (Bombay: General): The only question on this point of order that could arise is whether the change proposed by the Drafting Committee in article 365 is a consequential change. It is quite clear in the judgment of the Drafting Committee that this is not only necessary but consequential, for the simple reason that, once there is power given to the Union Government to issue directions to the States that in certain matters they must act in a certain way, it seems to me that not to give the Centre the power to take action when there is failure to carry out those directions is practically negating the directions which the Constitution proposes to give to the Centre. Every right must be followed by a remedy. If there is no remedy then obviously the right is purely a paper right, a nugatory right which has no meaning, no sense and no substance. That is the reason why the Drafting Committee regarded that such an article was necessary on the ground that it was a consequential article.

But, Sir, I propose to say something more which will show that the Drafting Committee has really not travelled beyond the provisions as they were passed at the last session of the Constituent Assembly. I would ask my honourable Friend Pandit Kunzru to refer to article 280-A, clause (5), and article 306-B. Article 280-A, clause (5), and the provisions contained in the concluding portion of the main part of 306-B are now embodied in article 365. To that extent, article 365 cannot be regarded as a new article interpolated by the Drafting Committee. If my honourable Friend.....

Pandit Hirday Nath Kunzru : May I interrupt my honourable Friend? Article 306-B relates only to the power of the Central Executive over the Governments of the States included in Part B of the first Schedule. My honourable Friend has extended that power of the Central Executive over all State Governments.

The Honourable Dr. B. R. Ambedkar : If my honourable Friend would allow me to complete, I would like to read article 280-A, not of the present draft, but of the old, as was passed it the second reading. These are financial provisions. Clause (5) of article 280-A says: "Any failure to comply with any directions given under clause (3) of this article shall be deemed to be a failure to carry on the Government of the State in accordance with the provisions of this Constitution." Therefore, article 365 merely seeks to incorporate this clause (5) of article 280-A. My honourable Friend, if he refers again to article 306-B

Pandit Hirday Nath Kunzru : Will my honourable Friend allow me to interrupt him again?

The Honourable Dr. B. R. Ambedkar : I think it would be better if he speaks after I have completed my argument. If he refers to article 306-D which deals again with the power to issue instruction and directions to States in Part III which are now States in Part B of the First Schedule, he will see that the last portion says: "any failure to comply with such directions shall be deemed to be a failure to carry on the Government of the State in accordance with the provisions of this Constitution." There fore my contention is that article 365 does not introduce any new principle at all. It merely gathers together or assembles the different sections in which the power to issue directions is given and states in general terms that wherever power is given to issue directions and there is a failure, it would be open to the President to deem that a situation has arisen in which there has been a failure to carry out the provisions of this Constitution. The only article in which such a power to deem that there has been a failure to carry on the Government in accordance with the provisions of the Constitution was not specifically mentioned were articles 256 and 257. It merely that the Centre had the power to give directions. Therefore, if there is it all any extension of the principle embodied in articles 280-A, (5) and 306-B in the new article 365 it is with regard to some of the articles in which this fact was not positively stated. My submission is that when the Constitution does say that with respect to certain articles where the power to issue directions is given, the President shall be entitled or it shall be lawful for the President to deem that there has been a failure to carry on the Government in accordance with the provisions of the Constitution, it seems difficult to justify that certain other articles in which also the power to issue directions has been given should have been omitted from the, purview of article 365. The object of article 365 is to make the thing complete and to extend the express provision contained in article 280-A and article 306-B which have been passed by the House already. Therefore, I submit that there is no innovation of any kind at all. It merely makes good the omission which had taken place with regard to some of the articles which are, I submit, on the same footing as articles 280-A clause (5) and 306-B.

Pandit Hirday Nath Kunzru : May I point out that the reference by Dr. Ambedkar to articles 280-A and 306-B in the Draft Constitution as amended by the Constituent Assembly is not to the point? Article 280-A refers only to financial emergencies. The power conferred on the President under that article can be exercised only when he has declared that the financial stability or credit of India or any part thereof is threatened. The scope of that article therefore is very limited. There is another article in the Constitution which enables the President to issue a proclamation of emergency. Such a proclamation can be issued only when India is threatened by war or internal disturbances. But, these articles do not justify the extension of the power that the Central Executive may exercise in certain emergencies to all cases. Article 306-B is definitely limited to the case of States mentioned in Part B of the First Schedule. Such a provision was not made in the Constitution in reference to States mentioned in Part A of the First Schedule. Dr. Ambedkar has himself admitted that he has extended the provisions of article 306-B and article 280-A. He has generalised them and brought even the States mentioned in Part A of the First Schedule under the wider exercise of the powers of the Central Executive referred to in articles 306-B and 280-A. I submit, Sir, that the analogy is unjustified and, in any case, incomplete. Whatever the Assembly may have done in the case of States mentioned in Part B of the First Schedule, it does not follow from this that the same provisions must be extended to the States mentioned in Part A of the First Schedule. I submit, therefore, that the language of article 365 goes beyond the express decisions of the Constituent

Assembly. A certain difference has to be maintained between the States mentioned in Part A of the First Schedule and Part B of the First Schedule. The difference cannot be obliterated simply because the Drafting Committee desires that they should be removed.

Pandit Balkrishna Sharma (United Provinces: General): May I offer some remarks?

Mr. President : On the point of order?

Pandit Balkrishana Sharma : Yes, Sir.

Mr. President : Dr. Ambedkar has already replied.

The Honourable Dr. B. R. Ambedkar : I would like to draw your attention that even in the present Government of India Act there is a provision to the same effect contained in section 126 which empowers the Governor-General to give directions to the provinces and if it appears to Governor-General that effect has not been given to any such directions he can in his discretion issue orders to the Governor who was to act in his discretion in the matter of carry in go out the directions given by the Governor-General. This provision, if I may say so, is very necessary because we all know—those of us who were Ministers during the time of the war—how these mere powers of giving directions turned out to be infructuous when the Punjab Government would not carry out the food policy of the Government of India. The whole Government can be brought to a standstill by a province not carrying out the directions and the Government of India not having any power to enforce those directions. This is a very important matter and I submit that the change made is not only consequential but very necessary for the very stability of the Government.

Pandit Hirday Nath Kunzru : The provisions of the Government of India Act, 1935, were before us when the Constitution was drafted and was considered by this Assembly. We have copied certain provisions from that Act, but we have deliberately omitted certain other provisions. We have for instance included in the Draft Constitution a provision relating to the breakdown of the Government of a State. We have copied that provision from the Government of India, Act, 1935. We have done so deliberately and after a great deal of discussion. Yet we have omitted to enact certain other provisions of the Government of India Act, 1935, in the Draft Constitution and article 126 is one of those articles in that Act that has not been copied in the Draft Constitution. The reference therefore to section 126 of the Government of India Act, 1935 does not in any way justify the language of article 365 which is now before us.

Mr. President : The limited question which I have to decide at the present moment is whether this new article 365 goes beyond the decisions which were taken and whether it is not necessary in view of all the other articles which we have adopted. Now it seems to me that if we turn to article 280-A and also to article 257, the wording is exactly the same so far as it refers to the power of the Union. In article 257 we find—

"The executive power of the Union shall also extend to the giving of directions to a State as to such and such matters."

and in article 280-A, clause (2)—

"The executive authority of the Union shall extend to giving of directions to any State such and such matters.

So in both the cases the power of the Union is exactly the same and expressed in exactly the same words. Therefore the necessary consequence which is given in clause (5) of article 280-A is attracted to article 257 also, and from that point of view I think it is not a question of order. Of course it is a matter on which the House may hold a different view and it may throw it out on merits

[Mr. President]

but I think this proposal is in order and you may discuss it. Pandit Bhargava has really given notice for deleting this clause. Now it is for the House whether to accept it or not.

Prof. N. G. Ranga (Madras: General): Has it been moved?

Pandit Thakur Das Bhargava (East Punjab : General): Sir, I beg to move:

"That article 365 be deleted."

In making this motion I do really think that as a matter of fact the Drafting Committee has rather "tended the scope of its jurisdiction by enacting this provision which is one of the most important sections in this Constitution and bringing it at this last stage. Since you have been pleased to give your ruling on the point of order, I will not advert to this aspect of the case and will confine myself to the question whether in the circumstances, this article 365 should be allowed to stand in the Constitution. Now as you have been pleased to observe, articles 256, 257 as also 280-A and 306-B have great relevancy when we are considering this question. In regard to article 280-A, there is no doubt that we have passed that if a situation should arise in which certain directions of the Government of India are not obeyed in regard to financial matters, the Government can hold that there is a failure to carry on the Government in accordance with the provisions of this Constitution. If you will kindly refer to article 356, you will observe that the basic provision says—

"If the President on receipt of a report from the Governor or Rajpramukh of a State or otherwise, is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by Proclamation....."

So the ultimate situation in which these powers should be exercised by the President is described in these words:—

"if a situation has arisen in which the Government of the State cannot be carried on accordance with the provisions of this Constitution."

If on account of the failure to comply with any directions given in 256 or 257 or 280-A or 306-B such a situation arises, then the President has got absolute power, even if there is no report from Governor, to make an order or declare an emergency or issue a proclamation. This is a question of fact. Without such a situation arising in fact a fictitious situation can be conjured up under articles 280-A and 306-B from which this provision has now been omitted. We are now out for allowing such fiction to be raised under article 365 by virtue of which the President will be able to hold without its being actually a fact that the Government cannot be carried on in accordance with the provisions of the Constitution. On any disobedience to a particular direction, however insignificant, a situation can be held to have arisen in the words of article 365. The question now is whether we are justified in arming the Government of India with these powers, that however insignificant the direction may be, however innocent the situation may be, yet it may be authorised to hold that such a situation has arisen which can attract the provision of 365. This is the real question. To me it appears that the question resolves itself into this, whether on account of the failure to comply with any direction, such a penalty can be imposed upon a Provincial Government, because it may be that so far as the provisions of the Constitution are concerned, so far as the orderly government of the State is concerned, it may be carried on with as much smoothness as before; but there may be a failure in respect of an insignificant direction.

We have also to consider the effect of articles 250 and 257. In my humble opinion, Sir, article 256 is clothed in Such general words that we cannot say that a particular dereliction of duty alone can attract this drastic provision. Article 256 runs as follows:

"The executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose."

We will come to the same situation in the case of article 257 also, because these words occur there in article 257 also, and they are very extensive, very vague, and very general, Sir, I do not visualise that our Central Government as at present constituted will ever exercise such absolute or arbitrary powers. But I should think that no Government of the day should exercise powers in an arbitrary manner. I know that the present Ministers of the Government of India are persons in whom people have confidence, and they will not abuse their powers. But we have to think of all future governments. We have to see if any Government of India manned by persons in some of whom the people may not have confidence, will not be able to abuse such provisions. That is the question at issue. My humble submission is that any Government of India consisting of twenty ministers exercising jurisdiction over various matters can give directions to a Provincial Government under the Factories Act, or under the Child Marriage Act, or under the Rehabilitation Act, or any other executive matter, and even a lawful or reasonable non-compliance can be taken advantage of capriciously to declare that a situation has arisen which has not really arisen.

Mr. President : But Mr. Bhargava, is not that an argument which cuts both ways? Suppose a Provincial Government were to ride rough-shod on a very important provision of the Constitution, or of law, and the Government of India were to issue instructions to carry on the Government in accordance with that provision, and the Provincial Government refuses, then how would the Government of India be able to enforce its orders?

Pandit Thakur Das Bhargava : I will just explain, Sir.

I am one of those who want that the Centre should be strong, quite strong and absolutely strong to control every provincial government. And I also can see that a situation can arise when very important directions of the Government of India may not be complied with. And therefore, I submit whenever such a situation arises, article 356 is there and the words used there are, I say, such as will certainly meet the needs of any case. The point is not that the Government cannot be carried on. The only question is if the President is satisfied that a situation has arisen when such a step is necessary, then the President can declare in any given set of circumstances, such a situation has actually arisen.. My humble submission is that even if there is only the fear of such a situation arising, even then it may be said that such a situation has arisen. Sir, there are two aspects of the case, as you have been pleased to point out. Such a situation need not have actually arisen, but even then, the President may say that a situation has arisen when action under article 256 or 356 should be taken, that the Government of the State cannot be carried on in accordance with the provisions of the Constitution.

Mr. President : The point is that a situation has arisen in which the government cannot be carried on, as distinct from the fact that the government is not being carried on. Supposing the Government of the State is not carrying on the administration in accordance with the Constitution, is that covered by that?

Pandit Thakur Das Bhargava : It is more than covered. It envisages a situation in which the government is not carried on. If it is not carried on

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then the question does not arise. There are the powers conferred under article 352 dealing with the security of India, when there is external or internal disturbance.

Mr. President : There is no question of external or internal disturbance but it is simply a case of government not being carried on. Government can be carried on, but it is not being carried on. Is that covered by article 356?

Pandit Thakur Das Bhargava : I think the Government of India must be alive to the situation every moment, and if the government cannot be carried on, the Government of India has got the power to act. The provision envisages even the prospect of danger, not to speak of existing danger. In article 280-A more than necessary power has been vouchsafed to the Central Government as financial matters are emergent matters and call for peremptory action. To article 306-B we agreed, because we know that certain States are not fully developed and therefore their general control is to be tightened for ten years at least. It may be that the financial position in a State may not be so bad, yet because it is an emergent matter, more than necessary power has been given. The provinces of A class are not under the general control. Under 306-B which deals with B class provinces the Honourable Sardar Patel has been good enough to point out why this drastic power has been given in the hands of the Government. Now this 365 has broken down the difference between A and B States. The provisions of article 256 deal with executive power and laws made by Parliament which are very fluid in nature. Thus, practically speaking, A class provinces have been brought to the level of B class States. Article 365 viewed as a penal provision creates a psychological difficulty also. Now, if we were to hold that with regard to every offence of the Indian Penal Code, from every crime omitted, the accused could be hanged, or sentenced to prison for twenty years, or to one year or only fined or even admonished, then the result will be that people will be encouraged to commit graver offences. This is the second law of Bentham's theory about punishments. I am sure that these powers under 365 are not going to be used in the smaller or lesser cases. I also know that with regard to food and rehabilitation, the provincial governments are not fully complying with the orders of the Central Government, and very grave difficulties have arisen in the country because of this. These powers under section 365 are not going to be used in the ordinary cases, and therefore there will be the tendency of the Provincial Government to defy the Government on more important matters or commit much worse offences as the consequences of big or small failures can be the same. Therefore it is necessary to apportion consequences in a proportionate measure to failures, assigning ordinary consequences to ordinary failures and serious consequences to serious failures. My submission is that the existence of this power is likely to conduce to greater difficulties.

Pandit Balkrishna Sharma : May I interrupt the honourable speaker for a minute? Provision 365 says that the President may hold that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution. It is not incumbent on him that on every trifling transgression by the Provincial Government he should

Pandit Thakur Das Bhargava : I know that, if he were to do so in every case then the carrying on of the Government of India would be impossible. But what does it mean? It means that every provincial government shall be constantly trembling before the Prime Minister. The Prime Minister of India will become not only the Grand Moghul, but he will be like a lion and the Provincial Governments will be like lambs. The Provincial Government will be in constant fear and will constantly tremble before him. Such a provision

invests the Central Government with absolutely arbitrary power and I maintain that arbitrary powers should not be given to any person. Ministries and Provincial Governments will have no security or stability and will change at the whim or caprice of the Prime Minister.

In practice such a power will not be used and its non-user will encourage bigger defaults and the tendency for disintegration will increase. This drastic power is not necessary and whatever is necessary is already there in 356.

Mr. President : You have not taken note of the distinction between an actual disobedience of the order of the Government of India—which order is justified under some provision or other of the Constitution—and a state of things arising which makes it impossible for the provincial government to be carried on. There is that distinction—a case of physical impossibility of the Government being carried on and a case of actual disobedience on the part of a provincial government to carry out the orders of the Government of India. This article is based upon that distinction.

Pandit Thakur Das Bhargava : Supposing there is a failure of the provincial government to comply with any of the directions given by the Government of India, will it not be declared that the future Government of the State cannot be carried on in accordance with the provisions of the Constitution, if the failure is such as really brings about the situation envisaged ? In case you postulate that the Government of a State cannot be carried on according to the provisions of the clause, the Government of India can take action under article 356. If the article is to be construed that only in case of prospective failure, when the situation is likely to arise, this 356 can be applied, then certainly your objection is perfectly valid. But, Sir, if you hold that in a given set of circumstances, when the government is not being carried on in accordance with the provisions of article 356, then article 356 applies to both the contingencies then there is no occasion for enacting a measure like this, which is very arbitrary and despotic in character.

The Honourable Shri K. Santhanam (Madras: General): Sir, I want to point out that this amendment is not quite appropriate. We cannot delete article 365 without leaving articles 360 and 371, as originally passed, truncated. The clauses there empowering the President to hold that there has been a failure of the Constitution have been taken out and incorporated in article 365. A wholesale deletion will go against the decisions which the House has already taken. It is only because they have brought article 365 that they have deleted the clauses in 360 and 371. A deletion therefore will not be in order but an attempt to restrict the application of article 365 to those articles will be in order. Otherwise we will be practically nullifying the original articles 360 and 371.

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

“That in article 365, after the word where the words ‘the President is satisfied that’ be inserted.”

During the second reading of the Constitution I made certain observations with regard to this article in the chapter on Emergency Provisions and I tried to mellow the harshness of some of the provisions and to tone down the drastic nature of some of them. I do not at this stage, therefore, propose to say anything, on the merits of the proposition, as the House has accepted the articles dealing with the emergency provisions in the Constitution. Once they have been accepted I suppose there will be room for this article as well. The only point in my amendment is that we must make it clear in the first part of the article as to what the *modus operandi* should be before the President holds that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of the Constitution. If the House will turn for a moment to article 356, there it is laid down that the President can

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not act unless and until he receives a report from the Governor or Rajpramukh and he is satisfied. Of course the words "or otherwise" are also there. If the House will turn to article 360 dealing with a financial crisis or emergency there also it is made clear that the President should be satisfied that a situation has arisen whereby the financial stability or credit of India is threatened. In both these articles dealing with emergencies it is specifically and clearly provided that the President must be satisfied, in the first instance, on the report of the Governor or Rajpramukh or otherwise, in whatever way he thinks fit or necessary. In both cases, my honourable Colleagues will see that unless, the President is satisfied the rest of the article cannot become operative. Therefore, I seek through my amendment to make a similar change in this article in conformity with the two articles to which I have just now referred and I would plead with the House that they accept my amendment, so that the article will be quite clear on this point, that once the President is satisfied that a State has failed to comply with or give effect to any directions of the Government of India, then he may hold that a situation has arisen where his special powers will have to be invoked. I, therefore, commend my amendment for the acceptance of the House.

Shri R. K. Sidhwa (C. P. & Berar: General): Sir, I move:

"That in article 365, after the words 'under any of the provisions of this Constitution' the words 'which is in direct contravention of the declared policy of the Union' be inserted."

Sir, I do not want to discuss this article at length, as you have very lucidly and rightly answered the arguments advanced by Pandit Kunzru and Pandit Thakur Das Bhargava. I only want to remind my honourable Friends who are opposed to this article that when we were discussing the Objectives Resolution in the very first session of the Assembly, very great stress was laid by every Member who spoke on the occasion that the Centre should be made strong and very strong. I wanted to know whether there was any Member at that time who stated that the Centre should not be made strong and everybody pleaded that the Centre should be made strong. From that point of view brought to bear on the Objectives Resolution, the Drafting Committee have borne that point in mind and amended the Constitution accordingly. While I do not want that the Provincial Government should be made a skeleton Government, still I do feel that under the conditions that are prevailing it is very necessary that the Centre should have some power in the event of the provinces going wrong. Do we for a moment think that any one believes that the Centre will exercise its power if the Provinces are functioning correctly? My amendment says that it is only "against the declared policy". I want to make that clear. Let it not be understood by Provincial Governments that in any ordinary matter the Centre is going to issue a fiat that "since you are not behaving well, your powers are suspended". I say when the Government is able to convince the people and also the province that they have gone against the declared policy and against the Constitution and that they are going wrong, then certainly the Centre should have the right to intervene. If the Centre has no right to intervene this Constitution will be a scrap of paper, and if one province goes one way and another some other way against the decision of the Centre, there will be chaos. Do we not know that so many situations are arising over price-control and finance and in so many things where we have given power under the Concurrent List and the Provincial List to the provinces? So if they squander away the money and go on controlling food and other articles as they like against the declared decision of the Government of India which voices the feelings of the people as a whole—it is they who look to the interests of the people—it will result in the provinces looking to their own provincial interests. I have seen in so many provincial matters that some of the Members look to the interests of their province alone at the cost of the people as a whole. I have seen that and

therefore the Government of India is justified if they interfere, as they represent the people of the country, they are the masters of the Provincial Governments. I would use that word. If the master's orders are not obeyed, then they would be called upon to behave properly; if they do not improve, that administration should be taken over by the Central Government. The necessity of this article has been very rightly and lucidly explained to the House. It is not in contravention of what we have decided I have tried to read into the arguments and Pandit Thakur Das Bhargava. Undoubtedly, there is a change in by Pandit Hirday Nath Kunzru the wording but the intention is still there: the object is there. Therefore, I contend that this article Should remain and the amendment that I have moved is commended for the acceptance of the House.

Shri Brajeshwar Prasad : I rise to support article 365 as moved by the Drafting Committee. Unfortunately, Sir, I have not been able to see eye to eye with Dr. Ambedkar on most of the fundamentals of this Constitution. But here is one article, which to my mind, seems to be a very important article and with which I am in perfect concurrence.

Sir, my Friend, Pandit Thakur Das Bharpava, made an observation during the course of his speech that he is not in favour of arbitrary powers being vested in any authority in the Government of India or in the provinces. I feel that our notions about power must be revised. We have not got the proper appreciation of the difficulties of the problem of power. Power must have some relation with the facts and with the political situation prevailing in a country. The facts of Indian life cannot be ignored. In India the danger is not of arbitrary power being vested in the Centre : the danger is, as Indian history will bear ample testimony to it, that fissiparous tendencies may gather momentum and as in the past they have led to the downfall of empires and kingdoms, may lead us to same fate. I feel that if Indian unity is to be attained, 'if the danger of innumerable Pakistans being set up in this country is to be averted, this power must be in the hands of the President. I do not care if this article is in consonance with the other articles: I am indifferent to the argument that the Drafting Committee has overstepped the limits of its authority. I know this article bears the stamp of a realistic approach. If this power is not vested in the hands of the Centre, the provincial Governments will go on acting without caring for the authority of the Central Government.

Dr. Ambedkar has referred to the case of the food situation in Punjab. He referred to the case where the Punjab Government refused to fall in line with the food policy of the Government of India. Why go so far? Even today it has been brought to our notice—birds whisper in our ears that there are recalcitrant Prime Ministers today who refuse to conform to the directions issued by the Government of India. This tendency must be checked, or else Indian nationalism has no future. Today, Sir, the situation prevailing in East Punjab, the situation prevailing in West Bengal, the situation prevailing to a more or less similar extent in other provinces as well are of a dangerous character and if this power is not vested in the hands of the Government of India, there is no future for this country.

Shri B. Das (Orissa: General): I speak with sorrow and misgivings. I listened to my Friend Mr. Santhanam. But I do not think there was any necessity of article 365. Pakistan Government retained section 93 in their Government of Pakistan Act and we abolished section 93 from the Government of India Act. We know the meaning of democratic Provincial Governments democracy in the sense of a qualified democracy from the position of Provincial Governments under the British rule. Today we have not only introduced article 371, but the Drafting Committee suddenly in their wisdom, during the recess of a fortnight saw to it that article 365, which is nothing but section 93 of the Government of India Act, 1935, in all its nakedness and horror,

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had been introduced. I do not see eye to eye with my Friend Mr. Santhanam that this is necessary. I thought article 371 was enough. It gives the Government of India general powers to tighten the Control over the States which are no more autonomous today, and which were never autonomous and never will be autonomous under this Constitution. Why is it that we want to look in to the horrors of revolt of the State? That means failure of the President and the Cabinet. If the States get out of control and try to revolt, then it would mean that there is not that cordial relation between the Government of the Union and the States, and any body who is not a lawyer even a layman like myself-when he reads this Constitution which we are shaping, will see that it does not leave the Provinces any power. The provinces are today glorified municipalities and corporations. If that be so, why go to the horrors of article 365 ? We are not going to evolve a Fascists democracy. We are going to evolve democracy. Why this fear? Why this suspicion? The President has got enough emergency powers and article 371 is ample. Do you mean to say that this Constitution denies the right to the President and the Cabinet to take over control without the introduction of this article 365? I do not think so. I think the President and the Central Cabinet have got ample reserve power to meet an emergency of the type that Pakistan Government met in taking over the Government of the West Punjab. I do not like at the fag end, when we are nearing the end and giving the finishing touches to this Constitution, to harbour the feeling in my mind that we are legislating as autocrats. I do not wish to raise the cry that we must vote down article 365. But how is it and why is it that the Drafting Committee gets all the odium of Fascism in the fortnight's recess that we had? When we separated we felt, in spite of many shortcomings in this Constitution, that at least we have evolved a democratic Constitution. Article 365 introduces the horror of the Section 93 by which most of us suffered for many many years. I am glad that Dr. Ambedkar is present. I want him to justify his wisdom in having recourse to this new article 365.

Shri K. Hanumanthaiya (Mysore State): Mr. President, Sir, every time the question of the Centre comes up, people say that they should make the Centre strong, because the provinces misbehave and that we must always keep a vigilant eye on them. Not that I am in favour of the view of making the Centre weak, but people who have fought for democracy, people who are framing a democratic constitution, forget that if the provincial governments misbehave there are provincial legislatures to set them right. It is a sad commentary upon the psychology of most of us that we completely ignore the provincial legislatures and the people in the provinces, and attribute all virtues to the Centre and to the Government that exists in Delhi. If we scrutinise for a moment the way in which the Governments are run in the provinces and the Centre, I for one do not find that the Government at the Centre is being run on very much more efficient or honest lines than the Governments are being run in the provinces. It is far better that we take note of the facts as they are. Can we say that the Secretariat here in Delhi is being run more honestly or more efficiently than the Secretariats are being run in the provinces? It is a sad commentary, as I said before, on us that forgetting these facts we decry the regimes in the provinces and the provincial legislatures every time and praise the Government here to the skies. That is a psychology which will ultimately work to uproot democracy in this country. As a friend of mine suggested a little while ago, we are investing the Central Government with powers which it will not be able effectively to exercise or honestly make use of.

Having said this, I would like to point out that when we were fighting for freedom one of the principles on which we concentrated our mind upon in constitution-making was decentralisation of power. In this vast country,

centralisation will ultimately work to the detriment of what we call “unity” itself. It is impossible for any human being or any Government to control effectively all the administration from Cape Comorin to the Himalayas. Decentralisation is a necessity. It was also the principle on which Mahatma Gandhi wanted to construct this Constitution. Of course, we have given up his ideas in many respects, and I am not quoting him for the purpose of winning sympathy for that cause. Anyway, I make this observation with all the sense of responsibility that I have certain classes and interests and communities have taken hold of the Government in the Centre and they think they will be able to carry on the Government and enjoy all the privileges that could be enjoyed by taking as much power as possible for the Centre. This is the psychology...

Shri M. Thirumala Rao (Madras: General): What do you mean by “communities”?

Shri K. Hanumanthaiya : You know it and I know it. Therefore, why question ? They think they will be able to get all power and all privileges. This is the underlying psychology and that will be the rock on which this Indian unity will break ultimately, if people do not mend their ways.

Now, Sir, it is not as if I am not in favour of this article. It is the logical culmination of the kind of Constitution-making we have been doing. We have given to the Centre—financial, executive and legislative powers—in varying degrees, to the detriment of the provinces and the units. Article 365 is merely the “operative portion” of the powers we have given. Once having conceded so many powers to the Centre, it would be illogical if we do not entrust it with the power to operate them as well. It is this, what article 365 seeks to do. But in supporting this article, I wish to sound a note of warning. Let those people who think that they are making hay while the sun shines take note of the future also. If this article is worked, as we apprehend, in the interests of the classes or the communities that have taken hold of the Government of India, people will not keep quiet. That will be the starting of trouble to break the much sought-after Indian unity and Indian nationalism.

Shri Mahavir Tyagi : Sir, I am in favour of the newly proposed article 365. I feel there is no violation of the scheme of decentralisation according to this article. This article establishes links with the rest of the units. To talk of decentralisation does not mean, if I may use the word, “circumferencing” the whole State. If we want to link all the States together in a circumference, we must have a Centre. A circle cannot exist without a Centre. This article merely provides the tender links and the lines of the circumference. These rights are being given not to Ministers or States or Governments alone. Here in this Constitution, the rights of the people are being defined. When the Constitution is violated and the rights of the people denied to them in a province or State, the people will have no other course except to appeal to Parliament to their representatives though these representatives after taking the oath as representative have in actual practice nothing to do with the people except to tax them and govern them. Therefore, the people who are thus governed must have a forum or making their appeals for the redress of their grievances. This article is the security for the people that the provincial Governments will govern them properly. If they do not govern them according to the articles of this Constitution, the people must have the right to go to the Centre and appeal. The Centre alone can take a dispassionate view of things. Here in the Centre there will be so many representatives from the States sitting together. They will always take a dispassionate view of things and surely, whatever action the President takes will always be considered by Parliament. Parliament is the Supreme Court of the land and therefore it must have the right to enforce the rights of the people in the various States. It is not a question of centralisation at all. This is neither centralisation nor what I could call circumferencing. The real position is that there should not be disintegration. These are the tender

[Shri Mahavir Tyagi]

Guarantees for the consolidation of the State. I must congratulate the Drafting Committee for introducing this provision. Although some might object to it. I support it. It is a great security of the rights of the people that the President should have the authority to intervene whenever he finds that the State Governments are not working according to the article of this Constitution

Mr. President : I desire to point out to the Members that we are really running a race against time. As this is an important article, I have allowed so much discussion on it. But if any other Member wishes to speak on this article he will have to bear this in mind. There are other articles also to be discussed. However, tomorrow by one o'clock we have to finish all the amendments.

Shri Kuladhar Chaliha (Assam: General): This is a very important article.

Mr. President : Therefore we, have discussed it for more than an hour and a half.

Pandit Hirday Nath Kunzru : Mr. President, many honourable Members have justified the language of article 365 on the ground that everybody recognises the need for a strong Centre in the present circumstances. Sir, I am at one with all those Members who wish that the Centre should have adequate power to discharge its responsibilities. But we cannot use the need for a strong Centre as an excuse for giving any bias we like to our Constitution.

My honourable Friend Dr. Ambedkar, in defending the draft of article 365, said that it was obviously necessary, when articles 256 and 257 authorised the Central executive to issue instructions in certain cases to the State executives, that a general remedy should be provided against a failure of the State executives to carry out the instructions of the Central executive. But Dr. Ambedkar has not been quite consistent in this matter. When he was asked some time ago whether any limitation had been placed on the power of the President, that is, whether there was any provision in the Constitution requiring the President to act in accordance with the advice received by him from the Ministry, he said that the Constitution proceeded on the assumption that every authority would be prepared to play the part assigned to it in the Constitution. It could not assume that every authority would try to violate the Constitution under which it was brought into existence. But, today he has taken almost an opposite view and he wants that the power of the Centre over the provinces should be made absolute. He wants that its instructions should not be allowed to be disregarded by the provinces in any circumstance.

However, that may be, Sir, I am quite prepared to consider this question on its merits. Let us see whether there are any provisions in the Constitution, apart from article 365, that enable the Central Government to take action when a provincial Government fails to discharge its responsibilities. If, Sir, the action of a provincial Government is of such a character as to lead to misgovernment and to create the possibility of disturbances occurring in the State, it will be open to the President under article, 352 to issue a Proclamation of Emergency and, when such a Proclamation has been made, he will have adequate powers to compel the provincial Government concerned to carry out the instructions of the Central Government. There may be other cases in which there may be mal administration and misgovernment in various directions, but the peace of the Province may not be endangered thereby. If such misgovernment goes so far as to make either the Governor or the Rajpramukh or the President himself feel that the Government of a State cannot be carried on in accordance with the provisions of this Constitution, the President will again be able to provide the necessary corrective under article 356. But articles 352 and 356 assume a little patience on the part of the Central executive. They can be brought into play only

when the Provincial Governments show persistent disregard of their responsibilities. If the Central Government is wise, it will not dream of compelling the provincial Government to carry out its wishes in every case. Its legal power may be there: yet experience of the world and the necessity for carrying the public and the provincial governments with it will tell it that it must occasionally wink at their negligence and allow the provincial electorates and the provincial assemblies to bring about a healthy change in the situation. If, however, the provincial electorates and the provincial assemblies fail to fulfil their responsibilities and the provincial governments continue to disregard the views of the Central Government, then the Central Government will have adequate powers under this Constitution, even if article 365 is deleted, to see that the government of the country is carried on in accordance with this Constitution.

I should like, Sir, to refer to one more point before I sit down. The Drafting Committee has referred to a number of articles in this Constitution in justification of the language of article 365. Now, one of the articles so referred to is article 371 which corresponds to the old article 306B. Had that article been omitted, then there might have been some justification for article 365, but article 306 B has not been omitted from this Constitution. It figures as article 371 but I have not been able to compare the languages of article 371 in the Constitution as revised by the Drafting Committee and article 306B in the Constitution as amended by the Constituent Assembly last month. If their language is the same—somebody says it is the same,—then I do not see how the Drafting Committee could refer to this article as a justification for bringing in article 365. The reference to article 371 is wholly irrelevant. There are two other articles referred to by the Drafting Committee to which I would like to refer, and they are article 353 and article 360. Article 353 deals with.....

The Honourable Dr. B. R. Ambedkar : Before my honourable Friend proceeds further. I would like to point out that the words “and any failure to comply with such directions shall be deemed to be a failure to carry on the Government of the State in accordance with the provisions of this Constitution” have been omitted from article 371 which corresponds to the original article 306B.

Pandit Hirday Nath Kunzru : Then I stand corrected in that respect, ‘If article 365 is deleted as proposed by my honourable Friend, Pandit Thakur Das Bhargava, then the Drafting Committee can revert to the old draft of article 306 B. Apart from this, Sir, since this question has been referred to by Dr. Ambedkar, I should like to point out that article 306 B in the Constitution as amended by the Constituent Assembly, which corresponds to article 371 in the present Draft or the Constitution that we are discussing now, is of limited duration. It will remain in operation for ten years only, and this provision cannot be referred to as a justification for introducing a new provision in the Constitution that will be permanent.

Sir, I was referring to articles 353 and 360 when my Honourable Friend, Dr. Ambedkar, pointed out to me the change that had been made in the draft of article 306B.

Shri H. V. Kamath : May I point out that article 371 provides for a period longer than ten years also?

Honourable Dr. B. R. Ambedkar : “Notwithstanding anything in this Constitution during a period of ten years from the commencement thereof, or during such longer or shorter period as Parliament may by law provide. . .” etc.

Pandit Hirday Nath Kunzru : Sir, article 353 refers only to the powers that can be exercised by the Central executive and the Parliament after a Proclamation of Emergency has been issued. Obviously, emergencies will last for a short time. This power therefore is not general: it has to be used only in certain circumstances of a special character. Again, article 360 refers to a situation in which the President is satisfied that the financial stability or credit of

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India or any part of it is threatened. In such cases, instructions can be issued to the provincial government regarding the canons of financial propriety that they should follow. This provision too can be used only in special circumstances. It is clear that it can be used only in an exceptional situation. As I pointed out, Sir, when this article was under consideration, this article was brought in towards the end of our discussions simply in order to enable the Central Government to order the Provincial Governments to give up the policy of prohibition. For all practical purposes that was the sole object of this article. (Shri T. T. Krishnamachari: 'Question'). The language is certainly wide: but I feel morally convinced that had the Provincial Governments not persisted in giving up their Excise revenue in disregard of the advice given by the Central Government article 360 would have found no place in this Constitution.

I have shown, Sir, that the Drafting Committee has justified the new article 365 by referring to many articles the operation of which will be of a limited character. None of those articles justifies the extension of the power of the Central Government to such an extent as to make it permanent and applicable in all circumstances. I think, Sir, that if my honourable Friend, Pandit Thakur Das Bhargava's amendment is accepted, no difficulty will arise. We can go back to the position that existed before the Drafting Committee, eager to introduce as many changes as it could, suggested the insertion of the new article 365 in the Constitution. I, therefore, heartily support Pandit Thakur Das Bhargava's amendment.

Mr. President : I think we had better close this discussion on this article now.

Honourable Members : Yes, Sir.

Mr. President : We have had enough discussion and all the view points have been placed very clearly before the House. It is now for the Members to decide. We shall now go to article 372.

Shri H. V. Kamath : We have article 366 and there is my amendment No. 411. Mine is a new definition.

Shri T. T. Krishnamachari : There is no new item, Sir, referring to the Constitution.

Shri H. V. Kamath : The article as a whole has been amended by the Drafting Committee. I have got an amendment to the article, and it is consequential upon the amendments made by the Drafting Committee

Mr. President : It is quite clear that the 'Constitution' only means 'the Constitution of India'; it cannot mean any other Constitution. I think you had better leave it to them.

(Amendment No. 412 was not moved).

Shri R. K. Sidhwa : Mr. President, Sir, my amendment says:

"That article 373 be deleted."

This article relates to article 22. It says that after the commencement within one year the President shall have power until the Parliament makes the law for article 22. I feel, Sir, that article 22 is very important. Parliament will make law within three months after the commencement of this Constitution and therefore in my opinion.....

Shri T. T. Krishnamachari : It would not do because something has to be done under clause (4) of article 22 which nobody will be able to do on the 26th of January. If we do not have this provision, the whole thing will become inoperative.

Shri R. K. Sidhwa : I see the importance of it. I thought that the Ministry would be able to bring in a Bill in the Parliament within three months. If it is humanly not possible, I do not want to press.

Prof. Shibban Lal Saksena (United Provinces General): Mr. President, Sir. I beg to move:

“That in article 373, for the words ‘one year’ the words ‘three months’ be substituted.”

Sir, this article 373 is intended to give the President power as a sort of substitute for Parliament under article 22 especially clauses (4) and (7). If the new clause of Dr. Ambedkar, i.e., amendments 545 and 546 be taken as the final form in which article 22 will be in the Constitution then after the amendment is made, it will read like this :

“(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless—

(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention :

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by order made by President under sub-clause (b) of clause (7); or

(b) such person is detained in accordance with the provisions of order made by president under sub-clauses (a) and (b) of clause (7).”

And clause (7) will read as follows :

“(7) The President may by order prescribe—

- (a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4);
- (b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for such detention; and
- (c) the procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause(4)”.’

Thus, Sir, the powers given to Parliament in the final form of article 22 are taken by the President for one year. I think, Sir, that this is something drastic. I can understand that immediately on the 26th of January we may not be ready with the new legislation. But I should certainly think that before the budget session is over, that is by April. we should have the new law passed. I am, therefore, suggesting, not the deletion of the article as my honourable Friend Mr. Sidhva has suggested, but the substitution of three months for one year. It is, of course, obvious that the present session of the Assembly will be over by the 22nd of December and it may not be possible to meet again and pass the law before the 26th of January. But, I think before the budget session ends, the new law should be passed and we should not have to wait for one year to make this law, that is till the next December or January. I personally feel that the use of the words ‘one year’ shows to some extent the respect that the Drafting Committee pays to the liberties of the subject. This question deals with the taking away of the liberty of the subject and keeping him in detention. We do not want to leave this matter pending for one year. I think the period of three months given in my amendment is quite enough, and I think before the end of three months we should be able to provide in what circumstances the Government can detain a person for a longer period than three months. Clause (7) of article 22 gives the power to Parliament to make law prescribing the circumstances under which and the class or classes in which a person may be detained for a period longer than three months as also the

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maximum period for which any person may be detained. This must be decided by the Parliament and should not be left to the Executive itself. The fact of the matter is that this power is given to the Executive and we want to place some restrictions on the Executive. If we leave it to the Executive to frame the rules for a period of one year, there will be no restriction on the power of the Executive and there will be a denial of democracy and freedom. This article shows a great disrespect for the liberty of the subject. I therefore think that three months should be substituted for one year.

Shri B. Das : I am not moving amendment No. 415, Sir.

Mr. President : Amendment 418 : Mr. Kamath.

Pandit Balkrishna Sharma : I have an amendment No. 416, Sir.

Mr. President : That does not arise out of any amendment of the Drafting Committee.

Pandit Balkrishna Sharma : There is one in the subsequent List.

Mr. President : There is amendment No. 503. When we take up amendment No. 503, this will come in as an amendment to that.

Shri H. V. Kamath : Mr. President, I move. Sir, amendments 418 and 419;

“That in clause (5) of article 379, for the words ‘after such commencement’ the words ‘on such commencement’ be substituted.”

I find from List IV, Sir, circulated last night, the Drafting Committee has thought better and they have accepted this amendment.

“That in clause (5) of article 379, for the words ‘as the case may be, the Deputy Speaker’ the words the Deputy Speaker, as the case may be’ be substituted.”

This is more or less formal amendment and if you will please, Sir, a verbal one, and I leave it to the sober judgment of the Drafting Committee.

Mr. President : Article 387, amendment No. 420.

Shri H. V. Kamath : Sir I move:

“That in article 387, the words ‘and different provisions may be made for different States and for different purposes by such order’ be deleted.”

Sir, this article 387 deals with special provisions as to the determination of population for the purposes of certain elections. My recollection is that in the last session of the Assembly, under the corresponding original article, more power was sought to be given to the President than visualised in the present article minus the italicised portion. There was a full dress debate in this House and the article was later on amended so as to refer only to the determination of the population of India or any part thereof. The other matters were stated to be important enough to be left to regulation by Parliament, and I believe you too intervened in the debate and assured the House, that what was contemplated was merely the determination of the population figures for the country or any part of it. The italicised portion of the new article deals with matters which are in my humble judgment, so important that they should not be left to the discretion or judgment of the President and the Executive. This portion refers to different provisions and for different purposes also. I do not know which are the purposes that are intended here. I think this should not be left to the initiative of the President and the Executive. I move amendment number 420 and commend it to the House for its earnest consideration.

Amendment 421, I leave to the Drafting Committee. Amendment 422 this is also a verbal amendment and I leave it to the sober judgment of the Drafting Committee.

Mr. President : Article 391: amendment No. 424.

Shri H. V. Kamath : There is an amendment by Shri Thakkar Bapa, No. 423, Sir.

Mr. President : There is no amendment of the Drafting Committee; you proceed with article 391, amendment No. 424.

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

“That in clause (1) of article 391, for the words ‘amendment in’ wherever they occur, the words ‘amendment to’ be substituted.”

This is also a verbal amendment and I leave it to the wisdom of the Drafting Committee.

Sir I move:

“That in clause (1) of article 391, for the words ‘anything in this Constitution’, the words ‘anything contained in this Constitution’ be substituted.”

This amendment is also on a par with amendment 424 and I leave it to whatever fate may overtake it at the hands of the Drafting Committee.

Shri R. K. Sidhwa : Mr. President, Sir, I move :

“That at the end of article 391, the following new clause be added:—

‘(3) Such an amendment or amendments shall be placed within two months of the passing of Such an order before Parliament for its approval.’ ”

Sir, this article is a very important one.

Shri T. T. Krishnamachari : May I interrupt my honourable Friend and point out to him that the President will merely be putting into the provisions of the Constitution what would be a matter of fact and that would not admit of any approval by Parliament or of even placing before Parliament because on the 26th of January, these changes must become part of the Constitution. Otherwise, these States to which these changes refer will be hanging in the balance.

Shri R. K. Sidhwa : My point is this, I will just read the article as it is:

“if at any time between the passing of this Constitution and its commencement any action is taken under the provisions of the Government of India Act, 1935, which in the opinion of the President requires any amendment in the First Schedule and the Fourth Schedule, the President may, notwithstanding anything in this Constitution, by order, make such amendments in the said Schedules as may be necessary to give effect to the action so taken and any such order may contain such supplemental, incidental and consequential provisions, as the President may deem necessary.”

I refer to the First Schedule. I do not want to give any power to the President for First Schedule, which is a most contentious subject; during the last session we discussed it and postponed it for the consideration of this House. The First Schedule relates to addition or subtraction relating to the States and also the names of the States. If any additional name is to be made, could it be left to the President? Supposing Madras is to be divided, may I know if merely the President will have a power to add Andhra into this list or Maharashtra to be added to it and also to change the names of the States?

Shri T. T. Krishnamachari : Action would have been taken under the Government of India Act already before the promulgation of the Constitution.

Shri R. K. Sidhwa : I feel that the change in the name of States should be in the absolute power of this Assembly. With due respect to you, I feel that this is an important matter on which the House must have a voice. Already we have received a suggestion from U.P. to change the name of the

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State and there is a great deal of opposition from the Members except the U.P. Members. Then again about the new provinces that are to be created, may I know whether our voices are to be stifled down, and that it should be confined to Members of the province concerned? We should have a voice in deciding whether there should be additional provinces or separation of provinces and in the renaming of the provinces. Therefore I have formally moved this amendment. My intention is that the President should not be empowered. On the contrary it embarrasses the position of President by giving him the power on this vital matter where there is a great deal of opposition in the House and various Members.

I therefore contend that this article should be re-drafted or if the addition is to be made by tomorrow, we might make it. Or we might, by common consent, hold it over and before we disperse, just before the passing of the third reading, we might consider this subject and decide it here but it would be unfair, in my opinion, to take away my right to express my view—on the question of naming of States and also the creation of new States. I therefore submit and request you—this is a personal appeal to you, Sir, that.....

Mr. President : This article contemplates action taken under the provisions of the Government of India Act. If a new province is created under the Government of India Act, the President may take note of that fact and act under this article. It has nothing to do with the naming of existing provinces.

Shri R. K. Sidhwa : May I know whether the President will not change the name under this Constitution ?

Mr. President : Not of existing provinces but of course, if a new province is created, it will have a name. If the action has to be taken under the provisions of the Government of India Act, 1935 *i.e.*, a province will have been created by the 26th January, under the Government of India Act, 1935, and when that province is created, the President has simply to take note of that fact and to incorporate it in the Schedule.

Shri R. K. Sidhwa : Parliament will have a voice in it ?

Mr. President : It is the Governor-General who acts under section 290 for creating a new province and the President has to take note of that fact and to mention that particular new province in the Schedule.

Shri R. K. Sidhwa : That would mean under that clause the Governor General, at the instance of Ministers, would act?

Mr. President : Of course it is entirely the Governor-General who will act on the Ministers' advice. The Governor-General is not likely to act without ascertaining the views of the Legislature or of the provinces.

Shri R. K. Sidhwa : May I know whether the Governor-General will have a right to rename the provinces under that Act?

Mr. President : Not to change the names of the existing provinces but to create new provinces. If a new province is created, then the President is expected to take note of that fact and to incorporate that in the Schedule.

Shri R. K. Sidhwa : That means we are precluded from expressing our views.

Mr. President : Otherwise the creation of provinces has to be held over till after the new Constitution comes into force. It comes to that. This new article has been brought in to enable new provinces to be created if conditions are created in which such action becomes possible but that would take away the

right of the Governor-General to act under section 290 before even 26th January. You cannot take away the powers given to him under the Government of India Act before 26th January. That power is there under the Act.

Shri R. K. Sidhwa : Before we disperse on the 26th November could not we know?

Mr. President : it is more than I can say.

Shri M. Thirumala Rao : That is a matter for the Legislative Assembly. We are drafting the Constitution for the future. Mr. Sidhwa's amendment is entirely irrelevant because it is a matter for Parliament.

Shri R. K. Sidhwa : I am particular about expressing my view.

Mr. President : What ever the Governor-General can do under the Act of 1935, he can do upto 26th January and you may take any remedy under the Act.

Shri R. K. Sidhwa : There is no remedy.

Mr. President : It can come up as an amendment of the Act.

Shri R. K. Sidhwa : There is no time.

Mr. President : That is why it has been introduced here to meet that particular emergency.

Shri R. K. Sidhwa : I hope you will bear this in mind. This subject was before the House and the right of this House is being taken away by this clause.

Mr. President : There is no right of the House being taken away. It only enable the President to take note of the fact which has taken place in accord with the Government of India Act of 1935.

Shri R. K. Sidhwa : The right is this : In the last session we discussed this First Schedule and the question of creating new provinces. Then the matter was held over.

Mr. President : What was held over—whether the province was to be created or not? Now that is held over.

Shri Mahavir Tyagi : Sir, I hope President means the President of the Constituent Assembly, and not the 'Governmental President'.

Mr. President : There is no other President except the President of the Union.

The Honourable Dr. B. R. Ambedkar : I propose to explain this matter in my reply. Mr. Sidhwa may conclude his remarks.

(Amendment No. 427 to article 392 was not moved.)

Mr. President : Amendment No. 428—Mr. Kamath. But I think it has been accepted?

Shri H. V. Kamath : No, Sir, it is not accepted.

Mr. President, Sir, I move my amendment No. 428. But I find that this proposed clause (3) of article 392 has been re-drafted, and List IV received last night gives us the amended or revised clause. So may I relate my amendment to that, Sir?

Mr. President : Yes.

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

“That in amendment No. 505 of List II to the proposed clause (3)—(now it will be No.572 of List IV)—for the word ‘before’ the word ‘until’ be substituted,”

or alternatively,

“In amendment No. 572 of List IV, in clause (3) of article 392, for the word ‘before’ the words ‘until immediately before’ be substituted.”

I find, Sir, the word “before” here is not quite accurate and does not convey the exact sense of this clause. What is meant is that until the new Constitution commences—may be at sun-rise on the 26th January, that this clause means that until that very second, before 6 o’clock or sun-rise on the 26th January, the Governor-General will have these powers and exercise these powers conferred by this article. The word “before” is somewhat vague, especially when used in a Constitution, and I feel it is not quite happy. I therefore suggest that it may be substituted by the word “until”. It conveys the sense better than the word “before”. “Before” can mean any time before the commencement; there is no precision about it. I do not like the word “before”. But I am open to correction and I am prepared to give place to men of better knowledge of the language, to more competent men, in this matter. But left to myself, I would choose the word “until” Or if the word “before” should be there. I would have “until immediately before” the commencement on the Constitution. But as I said, I would leave it to the wisdom of the House and of the Drafting Committee to deal with this amendment as they like.

Then I come to the next amendment-431.

“That in item 5 of Part A of the First Schedule for the name Koshal Vidarbh’ the name ‘Madhya Peadesh’ be substituted.”

Sir, the House will remember that when this Schedule was adopted during the last session, you, Sir, told us that whatever changes might be made or sought to be made in the names of the States in Part A of the First Schedule, they will be considered during this session and the amendments that had been tabled during the last session were referred under your instructions, to the Provincial Governments.

Mr. President : It might cut short discussion if I say that I understand that the C.P. Government have recommended the name Madhya Pradesh. So perhaps. no further discussion is necessary on this amendment.

Shri H. V. Kamath : Sir, there was some controversy in the papers; but if that name has been accepted, I agree there will be no necessity for further discussion. I heard that the Drafting Committee had referred it back to the Provincial Government.

Shri R. K. Sidhwa : Sir, on a point of information, may I know whether the recommendation of the Provincial Government will be automatically accepted?

Mr. President: Nothing is automatically accepted. I am only saying that this is now practically an amendment of the Drafting Committee, and it will be subject to the vote. Mr. Kamath need not now press his amendment.

Pandit Balkrishna Sharma : Sir, in view of what you have said, may I know whether the recommendation sent up by the United Provinces will also automatically become the amendment of the Drafting Committee?

Shri R. K. Sidhwa : Sir, that was exactly the point to which I drew your attention, whether the decision of the Provincial Government will automatically become the decision of the Drafting Committee? I do not think it is so Sir.

Mr. President : Very well, if that is your view, we shall take it in that way.

Shri Mahavir Tyagi : We decided the other day that the names should be accepted when they come from the Provincial Government.

Mr. President : Names have been received, but if some Members object, it is open to the House to take any name that it chooses, irrespective of what the Provincial Government has sent.

Shri R. K. Sidhwa : Sir, you also said that the Drafting Committee will consider the names received.

Mr. President : Very well. We now go to amendment No. 432.

Shri H. V. Kamath : Regarding my amendment No. 431, I am happy the Provincial Government has also sent up the name “Madhya Pradesh”. I think it is a far happier name than “Koshal Vidarbh”, and I have no doubt that the House will accept it.

As regards No. 432 I move:

“That in item 9 of Part A of the First Schedule, for the name ‘The United Provinces’ the name ‘Gangavarta’ be substituted.”

Shri Mahavir Tyagi “Gangaputra”?

Shri H. V. Kamath : No, “Gangavarta.”

Shri R. K. Sidhwa : May I submit that this may be held over till we know the opinion of the Drafting Committee? You, Sir, said last time that the Drafting Committee will place its proposals.

Mr. President : The proposals are there, and we shall know the opinion of the Drafting Committee before the vote is taken.

Shri H. V. Kamath : Sir, while I do feel that the name Aryavarta will be a dignified Sanskrit name,—perhaps it occurs in the Vedas too,—but at the present day, I am sure nobody will differ from me when I say that the name “Aryavarta is applied more to the whole of India than to a particular part of it, (*hear hear*), and I do not think at this time of day we should name any particular province on a racial basis, and the name Aryavarta has a racial odour about it.

Pandit Balkrishna Sharma : It has nothing, except a cultural odour about it.

Shri H. V. Kamath : Even if it is only cultural odour, I would not subscribe to that name, because the culture of the whole of India is one, whether you call it Aryan, or Indian or Bhartiya, it is all one. To call a particular province by the name “Aryavarta”—this is, the *home* of the Aryans, or whatever else it may mean—it will cast a reflection upon the inhabitants of the rest of India and it will, I feel, be resented by them. We should not name a particular province “Aryavarta” when the whole of India is known as Aryavarta. In one of the Vedas, I believe when the Aryans first came to India and settled down in a particular part of Northern India, they called that part Aryavarta. When they went down South the name was intended to comprise the whole of India, as we know it today. Therefore, I feel that the name Aryavarta is not very appropriate as the name of one province or State of India.

As regards the name “Gangavarta” I have it on very reliable authority—I have not read the Vedas myself but I am told—that one of the Vedas, either the Rig Veda or Sama Veda—refers to the part where the early Aryans had settled down as Gangavarta. Perhaps more often the name ‘Aryavarta’ is used but this name ‘Gangavarta’ also appears occasionally; and it has no racial or Cultural bias or odour attached to it. The Ganga is the biggest and most

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sacred river in India, and in the estimation of all Indians it is one of the biggest and holiest rivers in the world. There is an ancient tradition about the Ganga. I would request my honourable Colleagues from the U.P. to think deeply over this name and decide whether it would not be wiser and more appropriate to call their province Gangavarta instead of Aryavarta. In our Indian tradition and history, the Ganga has played a very prominent part, and even in our philosophy, our Vedas and Puranas and our scriptures. I for one would feel proud if the U.P. is named Gangavarta and not Aryavarta, as latter applies to the whole of India.

Prof. Shibban Lal Saksena : Sir, I move:

“That in item 9 of Part A of the First Schedule, for the name ‘The United Provinces’ the name ‘Aryavarta’ be substituted.”

My honourable Friend Mr. Kamath has proposed the name of Gangavarta and opposed Aryavarta, which our province wants to keep for itself. His main reason is that Aryavarta is the name of the whole of India. If he would only turn to article 1 of the Constitution he will find that the whole country is named Bharat and the name Aryavarta has been discarded. So his saying that the name Aryavarta applies to the whole of India is not correct. If our province had appropriated the name of Bharat then his argument would have been of some value but when we call ourselves Aryavarta his argument has no validity.

The whole of India was never called Aryavarta. Only Northern India, particularly the Punjab, the U.P. and Bihar were called Aryavarta. Mr. Kamath has suggested the name Gangavarta but the Ganga also goes through Bihar and Bengal besides U.P. The same argument will have to apply there. It is not an argument to say that we are trying to a appropriate name which applies to the whole country

Shri B. Das : You force your language on me and you steal our common country’s name also for your province.

Prof. Shibban Lal Saksena : The word ‘Aryavarta’ has been suggested not by myself alone but by our Provincial Congress Committee consisting of 650, members who met and discussed the matter. This was their unanimous verdict that Arvavarta should be the name adopted for the province. Our provincial government have also recommended the name. I do not think this House should deny us the privilege of calling ourselves by a name which is our ancient name. If any province like the Punjab or Bihar is jealous and wants to call itself Aryavarta, that is another matter: but no other province has claimed that name and there is no reason why we should not call ourselves by that name. I hope there will be no objection raised against our province taking the name, which has been decided both by the Congress Committee and the provincial cabinet.

There was one argument advanced that if we call ourselves Aryavarta, it implies that we alone are Aryans and others are not. That is not the meaning of it. Merely because in the whole country one province wants to call itself Aryavarta, my friend says that there is something racial about it. There is no racialism about the word Aryavarta. It is an ancient name of Northern India and our province is the heart of it. I do not think this House should impose on us any name other than what we want. I hope the House will support us.

Shri T. T. Krishnamachari : Sir, this matter might be discussed tomorrow, because there is a possibility of the Drafting Committee being in a position to put in an amendment, which will probably meet with the wishes of a large body of Members of this House.

Mr. President : Yes, we shall discuss the question of names tomorrow.

Shri H. V. Kamath : Sir, I move amendment Nos. 434 to 437.

“That in sub-paragraph (3) of paragraph 9, the words beginning with ‘during the period’ and ending ‘before such commencement’ be deleted.”

“That sub-para (2) of paragraph 10 be deleted,”

“That in sub-paragraph (4) of paragraph 10, for the words ‘for any State’ the words ‘of any State’ be substituted.”

“That in sub-paragraph (3) of paragraph 12, for the word ‘and’ occurring in line 1, a comma be substituted.”

Taking the last one it is purely a matter of punctuation and I leave it to the punctuating sense of the Drafting Committee.

Since I understand that a corrigendum has been issued with regard to this, I shall not press it. Coming to amendment Nos. 434 and 435 : these deal with salaries of Judges who might after the commencement of the Constitution be appointed judges of High Courts or of the Supreme Court. There is some distinction made between the appointment of new judges and the appointment of the old incumbents as judges of the Courts concerned. These clauses which I seek to amend by deletion of particular portions thereof, refer to the payment, of the difference between the pay which they used to obtain before they were appointed judges under this Constitution and the salary of judges is laid down in the Schedule to this Constitution. I think that this distinction should not be made between judges who are newly appointed, and those who were formerly judges of the High Courts or the Federal Court but now are appointed to the High Court or the Supreme Court. This refers to a few individuals and we have already fixed the salary of our judges at four figures. On top of that if we seek to give them the difference that obtains between the old and new salaries. I think the Indian people will feel, and rightly so, that we are unduly pampering our judges. If the old incumbents do not wish to serve on the new salaries, I think that the best course would be I am loth to believe that they would refuse to serve; they are patriots as much as we are, and I think they would very willingly agree to serve on the salaries as fixed in this new schedule—but if some, owing to sheer perversity or cussedness refuse to serve in the High Courts or in the Supreme Court—the Government of the new Indian Republic should ask them to quit and make way for judges, whom I think we can find in a, fairly large number among the able members of the Bar in India—men who are willing to serve our country and people on the salaries fixed in this new schedule. Once again I say that it would be wrong on our part to pamper a few individuals who were judges before the commencement of the Constitution and whom we seek to appoint as judges of the High Courts and Supreme Court. The Constitution is meant for the whole people, and not for a few individuals that might be affected by the provisions of the Constitution. I therefore commend my two amendments to the acceptance of the House.

Mr. President : Amendment 438 has already been moved. Amendment 439-Seventh Schedule.

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

“That in entry I of List I of the Seventh Schedule, after the word ‘preparation’ the words ‘and operation’ be inserted.”

The words in italics comprise the amendment of the Drafting Committee and they have sought to insert the portion relating to preparation for defence. I think, Sir, so far as military science and the art of warfare is concerned, it comprises not merely preparation but operation too, and the point of my amendment is to make this quite comprehensive and not leave any loophole for doubt, of whatever nature it may be. I therefore move that my amendment seeking to insert the word “operation” after “preparation” be accepted. The new

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entry would read thus : Defence of India and every part thereof including preparation and operation for defence. . . .” I hope the Drafting Committee and the House will accept this amendment.

Sir, I also move:

“That in entry 65 of List I of the Seventh Schedule, before the word ‘police’ the words ‘administrative or’ be inserted.”

The new entry which has been inserted here refers to Union agencies and institutions for professional, vocational or technical training, including the training of police officers. After the recruitment to the old I.C.S. was stopped. Our Government inaugurated a new service called the Indian Administrative Service and the members of that service used to be trained in a school, in Delhi—and I believe they are still trained here in this school, or may be, anywhere else in India. But the fact is that there is a training school not merely for police officers but for administrative officers as well. I do not know why you want to single out police officers alone. Either mention all civil officers : or if you mention the police then the other key service, that is, the administrative service, must find a place, like the old I.C.S., and I.P. the present I.A.S. and the I.P. must be included in this entry. I therefore commend my amendment to the acceptance of the House.

Mr. President : Mr. Sidhwa, which is the entry you want transferred.

Shri R. K. Sidhwa : Sir, I move :

“That entry 34 of List III be transferred to List I.”

Entry 34 relates to price control and it is most appropriate that this item should go to List I. Control of most of the items is from the Centre and price should be regulated from the Centre. At times there have been different kinds of prices prevailing and Provincial Governments have fixed prices without consideration, and you very well know the state of prices today. If price control is to be effective, it should be regulated through the Centre in the interests of all, and the provinces should have no voice in it. Take sugar, some provinces have fixed prices which are most incommensurate with the prices that are prevailing in other provinces, bearing in mind the railway freight and other charges. I therefore feel, if it is left to the Centre they will regulate it properly. They will see to the interests of the people and there will be no kind of bickering or bitterness among the people. You need price control, because price is the factor which has brought about great discontent among the people and the Government of India is being blamed sometimes for no fault of their own. Well the Provincial Governments are responsible. This control item should be exclusively put in List I. I am sure the Provincial Governments will welcome it because it avoids all bickering and discontent, and if left to the Centre there everything will be regulated properly. I commend it to the acceptance of the House.

The Assembly then adjourned for Lunch till 3 P.M.

The Assembly re-assembled after Lunch at 3 P.M., Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following Member took the pledge and signed the Register.

Mr. Hyder Husain (United Provinces : Muslim).

Shri H. V. Kamath : Mr. President, before we proceed to the second list, may I point out that there is an amendment of mine, No. 156* in the first list, to article 57 of the Constitution, which has escaped your notice?

Mr. President : We shall take it as moved.

Shri H. V. Kamath : I have an amendment No. 138 to article 41. I think the particular word used is patently inaccurate,—“Public assistance” It ought to be “State assistance”.

Mr. President : You may leave it to the Drafting Committee to consider. We shall now take up the second list.

Shri T. T. Krishnamachari : Sir, I beg to move

“That in article 9, after the word and figure ‘article 5’ the words ‘or be deemed to be a citizen Of India by virtue of be inserted.”

Actually, this amendment merely amplifies the wording of the article and does not need any comment.

Mr. President : Then we come to article 22.

Shri T. T. Krishnamachari : I will move the latter amendment in list IV. The number is 545. Sir, I beg to move :

“That for clause (4) of article 22, the following clause be substituted

(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless—

- (a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention :

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or

- (b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).”

Mr. President : I move :

“That for clause (7) of article 22, the following clause be substituted:—

‘(7) Parliament may by law prescribe—

- (a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4) ;
- (b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for such detention; and
- (c) the procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause (4).”

*56. That in article 57, the words “subject to the other provisions of this Constitution,” be deleted.

The House will understand that this is merely a restatement of clauses (4) and (7) of article 22 incorporating therein the amendment originally tabled by the Drafting Committee, No. 443, which sought to provide that Parliament may by law indicate the maximum period or prescribe the maximum period during which any person can be detained. This was a lacuna in clause (4) as it stood when the House passed it on the last occasion. The House will agree that it is a wholesome amendment in that, as clause 4(a) stood is the House passed it, there is no maximum period prescribed or could possibly be prescribed by Parliament or any authority for the period of detention of any person whom the Advisory Board considers to be a person who should be detained. The original amendment No. 443 was tabled for that purpose, but subsequently it was found that this has to be closely inter-related to clause (7) which is the operative clause under which Parliament might act. Thereafter it was found that it is better, to split up the original clause (7) into three parts and clearly indicate that there will be a maximum period for which any person or any class or classes of persons can be detained by any law providing for such detention. The matter does not involve any controversy and I believe, quite a number of Members of this House who were consulted in this matter were in agreement that this provision was necessary. This is the only provision that would really make any indefinite detention impossible. I hope the House will accept the amendments.

Mr. President : There were several amendments moved yesterday such as Nos. 78, 82 and 83. Does the present amendment No. 546 cover all those points ?

Shri T. T. Krishnamachari : I may mention, Sir, that in drafting this amendment in the present form, we took the advice of those Members who moved the amendments previously referred to. While I am not in a position to commit them, it appears to me that they are satisfied that this amendment will cover all possible contingencies they had in mind.

Prof. Shibban Lal Saksena : We will withdraw our amendments.

Mr. President : You withdraw both your amendments ?

Prof. Shibban Lal Saxena : Yes, Sir.

Mr. President : Then there are certain amendments to amendment No. 545, of which notice has been given. Mr. Kamath may move his amendments.

Shri H. V. Kamath : Mr. President, I beg to move amendments Nos. 579, 581 and 583.

“That in amendment No. 545 of List IV, the proviso to sub-clause (a) of the proposed clause (4) of article 22 be deleted.”

“That in amendment No. 345 of List IV in sub-clause (a) of the proposed clause (4) of article 22, for the word or occurring at the end the word ‘and’ be substituted.”

“That in amendment No. 546 of List IV, in sub-clause (a) of the proposed clause (7) of article 22 the words ‘without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause-(4)’ be deleted.”

Taking the first of these amendments first, I need not expatiate at great length thereon. I shall only point out that in clause (7) we have merely provided that Parliament may by law prescribe the maximum period for which any person or any class or classes of persons may be detained under any law providing for such preventive detention. After having said that Parliament alone will regulate this matter, no one dare say that any authority in the State will be able to override the law promulgated by Parliament. Therefore in my judgment this proviso to clause (4) is superfluous and redundant. I have no objection

to 'it in principle but I think it is unnecessary. We have laid down clearly that Parliament alone is empowered to regulate the maximum period of detention under this article.

Sir, coming now to my next amendment, 581, I may say that this brief monosyllabic amendment seeks to substitute the word 'or' by The word 'and'. In this amendment I wish to make a last attempt towards safeguarding the liberty of the individual. Of course this liberty cannot be safeguarded absolutely, because there is no absolute individual liberty nor is there any absolute safeguard against the violation of such liberty by the executive. I only wish to safeguard it in so far as it does not jeopardise the security of the State. If the article stands as it is, then it would mean that if Parliament lays down in a class of cases the maximum period of preventive detention, then, even without recourse to the machinery of the Advisory Board, a person can be detained upto the maximum period of two or three years—whatever period Parliament may prescribe. Clause (4) refers to two classes of cases; in one category fall those whose cases have been referred to the Advisory Board and who have to be detained for more than three months; and, in the other are the cases of those who have been detained in accordance with the provisions of any law made by Parliament under clause (7).

Under clause (7) Parliament can legislate with regard to the maximum period of preventive detention. I want, Sir, that in every case of preventive detention, the detenu's case must be referred to the Advisory Board,—in all cases. If the State, if the Government, wants to detain him for a longer period than three months, his case must be referred to the Advisory Board, whatever the class of case it may be; but as the clause stands, the word "or" complicates and vitiates the whole situation. Therefore I propose to substitute the words "or" by the word "and", so that every person must be detained under the law of preventive detention and that person's case must be referred to the Advisory Board in case of detention for a longer period than three months. These are the conditions which must be satisfied before the person can be detained for a period longer than three months. Therefore I suggest that the word "or" in clause (4) may be replaced by the word "and". My amendment No, 581 seeks to do that.

By amendment No. 583, I seek to delete the words "without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4)". This flows logically from the amendment which I have just moved, No. 581. This amendment No. 581 visualises the reference of all detention cases, irrespective of their category or class or circumstance, to the Advisory Board in cases of detention prolonged beyond the period of three months, and therefore the distinction sought to be made in clause (7) between the class of cases which should be referred to the Advisory Board and the other class where persons are detained without reference to the Advisory Board, goes. Therefore when all cases have to be referred to the Advisory Board in the event of a longer period than three months, the words which I have sought to delete in clause (7) are not necessary. I therefore move amendment No. 583.

The only Fundamental Right which this article 22 which we discussed at such great length in the last session confers is the right to detain without trial. I do not know what sort of right it is, but whatever it may be, let us mitigate the harshness and the injustice that might result from the abuse of power. I make this last attempt to safeguard the liberty of the individual, in so far as it is not inconsistent with or does not jeopardise the security of the State. I move my amendment Nos. 579, 581 and 583 and commend them for the acceptance of the House.

Shri Ajit Prasad Jain (United Provinces : General) : Sir, I move:

“That in amendment No. 443 of List II, for the proposed proviso to clause (4) of article 22, the following be substituted:

‘Provided that nothing in this clause shall authorise the detention of any person beyond the maximum period prescribed by any law under the authority conferred by Parliament under clause (7)’

I find that the redrafted clause (7) does not authorise the Parliament to make any law providing for preventive detention. On the contrary it authorises Parliament to prescribe the circumstances and the classes of cases in which persons may be detained for a period longer than three months. It will be seen that in the opening part of clause (4), ordinarily it will be open to a State Legislature or the Parliament to pass laws for preventive detention for a period upto three months, but two exceptions have been provided: one is sub-clause (a) where the case goes to an Advisory Board consisting of persons qualified to be appointed is judges of the High Court and two is sub-clause (b) when Parliament prescribes the circumstances or the class of cases where a larger period of detention may be provided. It is apparent that in many cases the law will have to be made by the State Legislature as preventive detention falls in the concurrent list. The amendment which I have given takes into account the fact that the law will have to be made by the Legislature of the State but the authority for making that law which prescribes for detention for longer than three months will be made by Parliament. That point is not clear from the amendment of the Drafting Committee and it is to make that point clear that I have moved this amendment.

Sir, I also move :

“That with reference to amendment No. 545 of List IV, for sub-clause (b) of the proposed clause (4) of article 22, the following be substituted:

‘(b) such person is detained in accordance with the provisions of any law made by a State under the authority conferred by Parliament under clause (7).’

or alternatively,

“That with reference to amendment No. 545 of List IV, for sub-clause (b) of clause (4) of article 22, the following be substituted:—

‘(b) such person is detained in accordance with the provisions of any law made under the authority conferred by Parliament under clause (7).’ ”

This amendment is connected with amendment No. 580. Here I have given two alternative drafts for the substitution of sub-clause (b) of clause (4). Sub-clause (b) at present says “such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).” Clause (7) does not provide for the detention of any person but only prescribes the circumstances and the class or classes of cases in which a longer period may be prescribed. It is to bring clause (4) and clause (7) into line with each other that I have given notice of this amendment, but in fact I must confess that the new amendments which Mr. Krishnamachari has moved just now were not with me and I have not been able to follow exactly the implications of the amendments moved by him. If the points which I have raised in the two amendments Nos. 580 and 582 are covered by his amendments, then of course there is no force in my moving my amendments. As I was not clear I have taken the opportunity of moving these two amendments.

Shri T. T. Krishnamachari : Sir, I move:

“That in the Explanation to article 58, for the words ‘For the purposes of this clause’ the words ‘For the purposes of this article’, be substituted.”

“That for clause (3) of article 59, the following clause be substituted :—

(3) The President shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until, provisions in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.”

“That in clause (3) of article 65, for the words ‘privileges, emoluments and allowances’, in the two places where they occur, the words ‘emoluments, allowances and Privileges’ be substituted.”

“That in the Explanation to article 66, for the words ‘For the purposes of (his clause) the words ‘For the purposes of this article’ be substituted.”

“That in clause (2) of article 71, for the words ‘before the date’ the words ‘on or before the date’ be substituted.”

Mr. President : There is an amendment to this, No. 584 by Mr. Naziruddin Ahmad. I am sorry there is an amendment left out by mistake, No. 617 by Mrs. Purnima Banerji.

Shrimati Purnima Banerji (United Provinces : General): Mr. President, Sir, I move :

“That in amendment No. 546 of List IV. the proposed clause (7) of article 22 be deleted.”

And the Draft as it stands in Draft Constitution may stand. I mean the original one as circulated by the Drafting Committee and given in the new draft *tinder italics*—that should remain. Sir, most of us will agree with the new change made in article 22 by amendment No. 545 providing the proviso that the Advisory Board would not be able to detain a person in spite of a revision of his case for more than the period prescribed by law, but however a change is now sought to be made in clause(7). It raises a certain doubt in our minds. None of us at any stage believed that the Advisory Board would at any stage take the place of Parliament; it was only suggested that in the absence of any law if a person were to be detained for more than three months, then the matter would go before a judicial body which would look into the case and allow further detention if need be in the absence of any law prescribing detention for more than three months. The doubt we have in our minds today is that under this new amendment proposed by the Drafting Committee where it says in clause (7) that Parliament may prescribe the circumstances of detention “without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4)” makes us feel that suppose if Parliament has got the power and we do not content that it has not—of laying down a law by which a man can be detained for more than three months, even so, if any person came under the Jurisdiction of that law, would it mean that the case of that person would not go for a judicial review before an Advisory Board? Could the Parliament dispense with the constitution of Advisory Board itself? Sir I suggest that that should not be and the process of review before an Advisory Board should be kept intact even if it may be perfectly legal for Parliament to enact a general law providing for detention beyond a period of three months. If in the Constitution you have statutorily provided for the detention of a man without trial for a period of three months you have taken away a part of the sting of that measure by providing an Advisory Board which would look into the matter and give a judicial review of the case and decide whether further detention was justifiable or not. If this is not done the man would be dealt with in accordance with the law of the land which Parliament may enact. In the new draft you have specifically said that the Advisory Board need not be consulted. If it means that in the making of the legislation that Board need not be consulted, we are in full agreement and possibly there can be no objection to it. But if it is meant that if a general law provides for the detention of persons for more than three months, and if’ after the general law has come into force a man innocently has got under the clutches

[Shrimati Purnima Banerji]

of that law, it seems as the clause now reads in the Constitution that a detenu's case need not go to an Advisory Board at all. Parliament may be empowered not to constitute an Advisory Board at all for even the judicial review of individual cases and that you are going to leave the formation of such a Board to any future law that Parliament may make. I therefore, suggest that the wording of clause (7) of article 22 should remain as it was stated by the Drafting Committee and this particular reference of not consulting the Advisory Board which raises that legitimate doubt in our minds be removed. At no stage we thought that the Advisory Board was to take the place of Parliament or was to be a law giving authoritative body. It was meant to be a judicial committee on which people of the stature of judges of the High Court would be sitting and would be a substitute for the ordinary channels of law denied to a detenu and therefore I would suggest in the drafting of this clause, the provision that such a Committee would be constituted in any case wherever a man is detained. That should be explicitly stated here and should not be left to an ambiguous interpretation. With these words, I move my amendment.

Mr. Naziruddin Ahmad : Sir, I move:

“That with reference to amendment No. 448 of List II, clause (2) of article 71 be deleted.”

or alternatively,

“That with reference to amendment No. 448 of List III in clause (2) of article 71, for the words ‘before the date of the decision’ the words ‘up to the time when the decision is communicated to him’ be substituted.”

The official amendment says that if the election of the President or Vice-President is set aside by the Supreme Court, then according to the amendment, the President or the Vice-President will function on or before the date of the decision of the Supreme Court. I submit, Sir, that this would lead to absurdities. If the decision of the Supreme Court is passed, say, at 12 o'clock on a certain day, then according to the amendment the President or the Vice-President will function for the whole of the day on which the judgment is passed. He will function even after he ceases to have office. Although his election is set aside at 12 o'clock, yet he will be able, according to this clause, to function after 12 o'clock for the remainder of the day. My amendment would try first, to eliminate that article because the normal law would be that as soon as the judgment is passed, the President or the Vice-President loses his job and, therefore, he ceases to function altogether and therefore, a clause of this nature is not at all necessary. Even if it is necessary, it should be, I submit as in my amendment, the second part of amendment No. 584. It is to the effect that as soon as the judgment of the Supreme Court is communicated to him, he ceases to function at once and from that very moment. That is a sensible way of looking at it and the judgment should be effective as soon as it is communicated to him. Unless we are very precise as to the moment when the President or Vice-President ceases to have any office, very glaring constitutional anomalies may follow. In fact the President or the Vice-President may have to perform very important constitutional acts and the legality or propriety of the act will be very much jeopardized or be open to question if we are not very precise as to the moment when he ceased to function because anything done after that will be ultra vires and anything done upto that moment would be intra vires. In this view of the matter. I think, that the precise moment when the judgment is communicated to him should be the real operative moment from which he ceases to function. That is the reason why I have submitted this amendment.

The Honourable Dr. B. R. Ambedkar : Sir, I move

“That in sub-clause (b) of clause (1) of article 72, for the words ‘offence under any law’ the words ‘offence against any law’ be substituted.”

Mr. Naziruddin Ahmad : Sir, I beg to move:

“That amendment No. 449 of List 11 be deleted.”

The amendment is to the effect that the words “offence against any law” be substituted. The question is whether there can be any offence ‘against’ any law. The text refers to offences under any law. You may offend against certain moral principles, against society, and so forth; but you cannot offend against the Penal Code or any penal enactment. There is an offence under a penal law. The original text as it was, was very good. But, in our attempt to improve it. I think matters have become worse. The way at which the Drafting Committee is proceeding to change its mind makes it obligatory on our Part to agree to the Constitution being passed at once. That would have the immediate effect of stopping the activity of the Drafting Committee. Now, the danger to the Constitution is not likely to come from Members like Mr. Kamath and my humble self, because the amendments will all be rejected, but the real danger to the Constitution is likely to come from the Drafting Committee itself. In order to prevent change of mind up to the last moment. I think, the best way would be to stop all amendments and to pass the Constitution as quickly as possible. It is from this point of view that I regard this attempt to alter matters.

Mr. President : Very well. Amendment 586. That also stands on the same footing.

Amendment No. 450 :

“That in the proviso to clause (1) of article 73, after the words ‘any State’ the words and letters ‘specified in Part A or Part B of the First Schedule’ be inserted.”

Mr. Naziruddin Ahmad : Sir, I move :

“That amendment No. 450 of List 11 be deleted.”

In fact, Sir, I really oppose the amendment. The original clause (2) of -article 73 dealt with the authority of Parliament to extend to any State, that in States in Parts A, B, C and D. But by the amendment, it is now sought to be restricted to a State specified in Part A or Part B of the First Schedule, I do not know why Parliament will cease to have any authority.....

Mr. President : Because the others are directly under Parliament.

Mr. Naziruddin Ahmad : If that is so, what is the need for specifying if here, I fail to see. In fact, it is difficult to follow the exact implications of this and the result, if any, if this is not passed. At any rate, these difficult constitutional principles are being showered upon the heads of Members with incredible speed and I do not think, I am quite sure, that this amendment is needed. In fact, if we try to introduce last-minute amendments, we do not know what anomalies we would be creating. In order to cure a malady, possibly we are introducing more maladies into the Constitution.

Mr. President : Article 81, Amendment No. 451 by the Drafting Committee. There is no amendment to this.

“That in sub-clause (a) of clause (1) article 1, for the words and figures ‘article 331’ the words and figures ‘articles 82 and 331’ be substituted.”

Mr. President : Article 100. Amendment No. 452 by the Drafting Committee.

“That for clause (3) of article 100, the following clauses be substituted:—

‘(3) Until Parliament by law otherwise provides, the quorum to constitute a meeting of either House of Parliament shall be one tenth of the total number of members of the House.

(4) If at any time ‘during a meeting of a House, there is no quorum, it shall be the duty of the Chairman or Speaker, or person acting as such, either to adjourn the House or to suspend the meeting until there is a quorum.

There are two or three amendments to this : No 587, Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : Sir, I move :

“That in amendment No. 452 of List II, in the proposed clause (3) of article 100, for the words ‘Until Parliament by law otherwise provides, the quorum’ the words ‘The quorum’ be substituted.”

Sir, the text of the amendment will make it that the quorum which will be fixed by the Constitution may again be interfered with by Parliament. I should submit that quorum is a fundamental principle and it should not be allowed to be altered by Parliament. The result would be that quorum will depend upon the mood of the Parliament for the time being. That has to be fixed on fundamental principles and on considerations of a fundamental nature. Once we lay down the quorum in the Constitution, it should be kept absolutely free from interference or alteration, by Parliament. If it is necessary to make any change, that change should be in the Constitution itself with the necessary safeguards attaching to an amendment of the Constitution itself. It is an important principle and should not be made to fluctuate with the temper of the House for the time being. In the Government of India Act, the quorum was fixed and it was not liable to be changed by Parliament. It has to be fixed in the Constitution.

Mr. President : Amendment No. 588 : Mr. Sidhwa. Your amendment is that the quorum should be one-sixth and not one-tenth. That is covered by an amendment which you have already moved. I will take it along with this also.

Shri R. K. Sidhwa : All right, Sir, It runs :

“That in amendment No. 452 of List II in the proposed clause (3) of article 100, for the word ‘one-tenth’ the word ‘one-sixth’ be substituted.”

Mr. President : The next amendment is 589, to suspend the meeting for half an hour. Do you need a speech for that ?

Shri R. K. Sidhwa : I do not want to make a speech, Sir. I formally move amendment 589 :

“That in amendment No. 452 of List II, in the proposed clause (4) of article 100, after the words ‘suspend the meeting’ the words, ‘for half an hour’ be inserted.”

My point is that the article as amended states that the meeting shall stand adjourned.....

Mr. President : Either adjourn the House or suspend the meeting.

Shri R. K. Sidhwa : Up to what time, Sir ? Supposing there is no quorum

Mr. President : Until there is a quorum.

Shri R. K. Sidhwa : That means for the whole day and the other Members will have to wait in the House without doing any business. That is the point. I feel this is not correct. After all, fix one hour if half an hour is not sufficient. Some time limit should be fixed.

Mr. President : That would, I think be provided in the Rules of Business. Anyhow, you have moved the amendment.

Shri R. K. Sidhwa : I state, Sir, that a time limit should be there. The quorum is always provided in the Constitution and not in the Rules. We are actually providing for the number of the quorum. Therefore, the time limit should also be there in the Constitution.

Mr. President : Amendment No. 453 by the Drafting Committee. I take that as moved.

“That in article 104, for the words ‘the Government of India’ the words ‘the Union’ be substituted.”

Amendment No. 454 in article 105. There is no amendment to this. I take that also as moved.

“That in clause(1) of article 105, for the words ‘Subject to the rules and standing orders’ the words ‘Subject to the provisions of this Constitution and to the rules and standing orders’ be substituted.”

Article 114. Amendment No. 455

“That in clause (2) of article 114, for the words ‘the amendments which are admissible’ the words ‘whether an amendment is inadmissible be substituted.’”

There is an amendment to this : No. 590 : Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : Sir, I beg to move :

“That in amendment No. 455 of List II in clause (2) of article 114, for the words ‘whether an amendment is inadmissible’ (*proposed to be substituted*) the words ‘as to the admissibility of the amendment’ be substituted.”

It is practically a drafting amendment; but I submit that the draft that I am suggesting would be better in clause (2) of article 114 as it would be amended by the amendment of the Drafting Committee, the text would be that ‘the decision of the person presiding as to amendments being inadmissible under this clause shall be final’. I want to make it clear that the decision of the person presiding as to the admissibility of the amendments under this clause shall be final’. In fact the official amendment is that the decision of the person presiding as to whether the amendment is ‘inadmissible’ is final. I should submit the ruling or the decision of the person presiding as to whether it is ‘admissible’ or ‘inadmissible’, both, should be final and therefore it should be expressed rather more generally that the decision ‘as to the admissibility of the amendment’ shall be final. It will mean that his decision that the amendment is ‘admissible’ is final, as also his decision that it is ‘inadmissible’ is also final.

Mr. President : We go to article 124.

Shri T. T. Krishnamachari : If I am permitted to explain the reasons for my amendment to 124, my honourable Friend will probably be satisfied. I move :

“That in clause (1) of article 124, for the words ‘seven other Judges’ the words ‘not more than seven other Judges’ be substituted.”

As it now stands 124 (1) runs thus—

“There shall be a Supreme Court of India consisting of a Chief Justice of India and until Parliament by law prescribes a larger number, of seven other Judges.”

It means that immediately on the 26th January when the Constitution is promulgated, the number will have to be raised to that figure whether or not there is enough work. So the alteration has been made prescribing the maximum and leaving it to Government of the day to go on increasing the number or approach Parliament if necessary to go beyond the number 7, so that action need not be taken on 26th January when Constitution is promulgated.

Mr. President : Do you wish to move your amendment?

Mr. Naziruddin Ahmad : I beg to move:

“That amendment No. 456 of List II be deleted.”

I find this is again a last minute change of mind on the part of the Drafting Committee. In the clause in question we have fixed the number as ‘7 other Judges’ apart from the Chief Justice. The amendment would reduce the number by substituting the words ‘not more than 7 other Judges’? In fact under the amendment it would be possible to appoint less than 7 Judges. I do not know on what basis the original article was conceived and passed by the House. If there was not enough work, then that was the time to introduce suitable amendments in the text. The House has not been given any indication as to the exact amount of

[Mr. Naziruddin Ahmad]

work which the Federal Court has or the Supreme Court will have on and from the 26th January next. In fact these changes should be based upon actual figures or actual estimates of work which would be in the hands of the Judges. I believe that the removal of the Jurisdiction of the Privy Council and also giving the Supreme Court the right over criminal matters, general superintendence and various other matters connected with the Constitution, there would be enough work for the Supreme Court on and from the 26th January. So this over-caution in respect of the number of Judges being placed in the discretion of the Government would be wrong. We should proceed on the basis of actual or estimated amount of work which the Court will have on and from 26th January. It is for this reason that I have asked for deletion of this amendment.

Mr. President : Article 133. There is amendment to this by the Drafting Committee—*457 and *457A. There is an amendment by Mr. Naziruddin Ahmad to 457A.

Mr. Naziruddin Ahmad : I move:

“That in amendment No. 457A of List II, in the proposed new clause (3) of article 133, for the words ‘notwithstanding anything in this article, no appeal’ the words ‘No appeal’ be substituted.”

This House has been made too familiar with the expression ‘Notwithstanding anything in this article or this Constitution’.

There are so many ‘Notwithstandings’ scattered throughout the Constitution that one ought to be extremely doubtful about how to interpret a particular clause. In fact the Drafting of the Constitution has been progressing on a hand- to-mouth basis from day to day. It is for this reason that this familiar device of ‘notwithstanding anything’ has been freely introduced here. The more satisfactory way would have been to draft it without these clauses so as to make them not at all necessary. I do not know why this ‘notwithstanding’ has been used in the context. The matter should require clarification.

Mr. President : We go to article 135. There amendment No. *458 by the Drafting Committee. There is no amendment to that. Similarly there is *459 to article 136 by the Drafting Committee. No amendment to that. Then there is article 145—there is an amendment No. *460 by the Drafting Committee. There is no amendment to that, but there were certain amendments which were moved yesterday—308 and 309. I do not know if they are covered.

Shri H. V. Kamath : My amendment No. 550, Sir.

Mr. President, I move, Sir:

“That for amendment No. 460, of List II, the following be substituted:—

“That in sub-clause (c) of clause (1) of article 145, for the words ‘rights conferred by Part III’ the words ‘right guaranteed by article 32(1) of the Constitution’ be substituted.”

*That the proviso to clause (1) of article 133 be omitted, and for the colon at the end of the said clause a ‘full stop’ be substituted.

After clause (2) of article 133, the following clause be added:—

‘(3) Notwithstanding anything in this article, no appeal shall, unless Parliament by law otherwise provides, lie to the Supreme Court from the judgment, decree or final order of one Judge of a High Court.’

*458. That in article 135, for the words, “not being a matter referred to in any of the foregoing provisions of this Chapter” the words “to which the provisions of article 133 or article 134 do not apply” be substituted.

*459. That in clause (1) of article 136, for the words” “The Supreme Court” the words “Notwithstanding anything in this Chapter, the Supreme Court” be substituted.

*460. That in sub-clause (c) of clause (1) of article 145, for the words “enforcement of the rights” the words “enforcement of any of the rights” be substituted.

As amended, the article would read:

“145 (c) rules as to the proceedings in the Court for the enforcement of the right guaranteed by article 32 (1) of the Constitution.”

If the House will turn to article 32, is adopted by the House, my honourable colleagues will see that clause (1) of article 32 provides that the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed. Sir, I am happy to see that in List IV of amendments, this article has been suitably amended. The word “rights” which occurs there in clause (4) has been suitably amended, and altered to the word “right” because under clause (1) of this article, there is only one right that is guaranteed, and the rights conferred by the Part is something different the right guaranteed by this article. So “right” is the right word and not “rights”, as it stands in clause (4) as it is today.

Once that has been disposed of, I turn to this relevant clause of article 145. I think a reference to clause (1) of article 32 will be adequate so far as the framing of rules as to proceedings in the Court under this article 145 is concerned. The right guaranteed under article 32, clause (1) is with reference to the enforcement of the rights conferred by the Part. Therefore, if recourse is had to this article 32, then it is obvious that what is meant is the enforcement of any of the rights conferred by the Part; and the right to enforce any of the rights conferred by Part III, is guaranteed under this article. Therefore, it will be more appropriate to say that the proceedings with regard to the enforcement of that right are referred to in this sub-clause (c) of article 145, clause (1). I therefore move amendment No. 550 of List IV and commend it to the House for its earnest consideration.

Mr. President : Amendment No. 461 by the Drafting Committee.

“That for clause (3) of article 158, the following clause be substituted:—

‘(3) The Government shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.’”

There is no amendment to it.

Amendment No. 462 by the Drafting Committee, to which also there is no amendment.

“That in the proviso to article 162, for the words ‘the Government of India’ the words ‘the Union’ be substituted.”

Amendment No. 463.

“That for sub-clause (a) of clause (1) of article 168, the following sub-clause be substituted:—

‘(a) in the State Bengal, Bihar, Bombay, Madras, Punjab and the United Provinces, two Houses.’”

To this there is the amendment No. 594 by Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : Sir, I beg to move formally amendment No. 594.

“That in amendment No. 463 of List 11 for the semi-colon at the end of the proposed sub-clause (a) of clause (1) of article 163, a comma be substituted.”

It is a drafting amendment and I leave it to the Draftsmen to consider the matter.

Mr. President : Then we come to article 181, and there are amendment Nos. 464 and 465 to it. These amendments have no amendments.

[Mr. President]

“That in clause (1) of article 181, the words ‘of a State’ be omitted.”

“That in clause (2) of article 181, for the word ‘House’ the word ‘Assembly’ be substituted.”

Then we come to article 185 and the Drafting Committee’s amendment No. 466.

“That in clause (2) of article 181, the words ‘of a State’ be omitted.”

To that amendment there is an amendment of Mr. Naziruddin Ahmad No. 595.

Mr. Naziruddin Ahmad : Sir, I move:

“That amendment No. 466 of List 11 be deleted.”

Clause (1) of article 185 as it stands, says: “At any sitting of the Legislative Council of a State etc., etc.” The words “of a State” are attempted to be deleted by the Drafting Committee. I submit that this expression “the Legislative Council of a State” has been used in various other contexts, and this amendment is a last-minute amendment. I would draw the attention of the House to article 182, where you have the words “The Legislative Council In fact there are similar expressions in

Mr. President : Only a State having such a Council.

Mr. Naziruddin Ahmad : “The Legislative Council of a State” is not improper. I cannot find out a similar passage at a moment’s notice. But if it is to be amended like this, there should be a clean sweep of all such expressions throughout the Draft Constitution in a systematic manner.

Mr. President : Article 189 and amendment No. 467 of the Drafting Committee.

“That for clause (3) of article 189, the following clauses be substituted:—

‘(3) Until the Legislature of the State by Law otherwise provides, the quorum to constitute a meeting of a House of the Legislature of a State shall be ten members or one-tenth of the total number of members of the House, whichever is greater.

(4) If at any time during a meeting of the Legislative Assembly or the Legislative Council of a State there is no quorum, it shall be the duty of the Speaker or Chairman, or person acting as such, either to adjourn the House or to suspend the meeting until there is a quorum.’

There are three amendments to this, Nos. 596, 597 and 598.

Mr. Naziruddin Ahmad : Sir, I move:

“That in amendment No. 467 of List If, in the proposed clause (3) of article 189, for the words ‘until the legislature of the State by law otherwise provides, the quorum’ the words ‘The quorum’ be substituted.”

I have already explained my reasons for moving this amendment.

Shri R. K. Sidhwa : Sir, I formally move amendments Nos. 597 and 598.

“That in amendment No. 467 of List II, in the proposed clause (3) of article 189, for the words ‘ten members or one tenth’ the words ‘twenty members or one-sixth’ be substituted.”

“That in amendment No. 467 of List III, in the proposed new clause (4) of article 189, after the words ‘suspend the meeting the words for half an hour’ be inserted.”

Mr. President : Article 191—amendments 468 and 469 of the Drafting Committee. There are no amendments to them.

“That in sub-clause (e) of clause (1) of article 191, for the words ‘the Legislature of the State’ the word ‘Parliament’ be substituted.”

“That in clause (2) of article 191, for the words ‘either for India or for any such State’ the words either for the Union or for such State’ be substituted.”

Article 193—amendment No. 470 of Drafting Committee, which also has no amendments.

“That in article 193, for the words ‘The Legislature of the State’ the words ‘Parliament or the Legislature of the State’ be substituted.”

Article 194—amendment No. 471 of the Drafting Committee.

“That in clause (1) of article 104, for the words ‘Subject to the rules and standing orders’ the words ‘Subject to the provisions of this Constitution and to the rules and standing orders’ be substituted.”

Shri H. V. Kamath : Sir, I have an amendment to article 194—my amendment No. 554.

Mr. President : All right.

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

“That in amendment No. 471 of List II, in clause (1) of article 194, the proposed words ‘the provisions of this Constitution and to’ be deleted.”

Sir, my amendment seeks to restore the *status quo*, that is to say, leaves the clause as it is. I fail to see why this change is sought to be made in this clause at this late stage. As far as the Legislature is concerned, the freedom of speech of Members of the Legislature is subject to the Rules and Standing Orders of the Legislature itself. Neither Dr. Ambedkar, nor Mr. Krishnamachari has told the House why this right is sought to be restricted by the provisions of this Constitution. What exactly is meant by.

Shri T. T. Krishnamachari : I may point out to my honourable Friend that if he reads article 211 he will find that it is necessary to add these words.

Mr. President : Discussion on the conduct of Judges is ruled out.

Shri H. V. Kamath : I hope it does not refer to provisions of article 19 regarding freedom of speech. If it does, it will mean the end of freedom of speech, no freedom of speech at all, taking away by one hand what is given by the other. Well, I shall not move my amendment, as adequate light has been thrown on the matter by Mr. Krishnamachari now.

Mr. President : Then we come to article 204 and amendment No. 472 of the Drafting Committee :

“That in clause (2) of article 204, for the words ‘the amendments which are admissible’ the words ‘whether an amendment is inadmissible’ be substituted.”

There is an amendment to this, No. 599 of Mr. Naziruddin Ahmad. But it is the same as was already moved and I shall take it as having been moved.

“That in amendment No. 472 of List II, in clause (2) of article 204, for the words ‘whether an amendment is inadmissible’ (proposed to be substituted) the words ‘as to the admissibility of the amendment’ be substituted.”

Then we come to article 217 and amendment No. 473 of the Drafting Committee.

“That for clause (c) of the proviso to clause (1) of article 217, the following clause be substituted:

‘(c) the office of a Judge shall be vacated by his being appointed by the President to be a Judge of the Supreme Court or by his being transferred by the President to any other High Court within the territory of India.’

There is no amendment to this.

Now we come to articles 230 and 231 and amendment Nos. 474 and 475 of the Drafting Committee.

“That in article 230, after the words ‘any State’ the words ‘specified in the First Schedule’ be inserted.”

[Mr. President]

“That in article 232, after the words ‘more than one State’ the words ‘specified in the First Schedule’ be inserted.”

Mr. Naziruddin Ahmad : Sir, I formally move amendment No. 600 :

“That amendment No. 474 of List 11 be deleted.”

The original article had reference to “any State” but the amendment has tried to clarify “any State specified in the first schedule”. I think that “any State” means a State in the First Schedule. All States are mentioned in the First Schedule in four different classes. If we refer to any State it certainly refers to the First Schedule and it seems to me that the clarification is unnecessary. Sir, I also move:

“That amendment No. 475 of List II be deleted.”

The same principle is involved as in the previous amendment.

Mr. President : Amendment No. 476.

“That in article 234 after the word ‘Governor’ the words ‘of the State’ be inserted, and after the words ‘High Court’ the words ‘exercising jurisdiction in relation to such State’ be inserted.”

Mr. Naziruddin Ahmad : Sir, I move:

“That amendment No. 476 of list II be deleted.”

There is reference in the original article 234 to the Governor. The expression “Governor” is attempted to be clarified by the adjectival phrase “Governor of the State.” “The Governor” certainly means Governor of a State in Part A of the First Schedule. There can be no Governor, except a Governor of such a State. If we say “the Governor”

Shri T. T. Krishnamachari : My honourable Friend need not labour the question of the Governor. He might confine himself to the latter part of the amendment. Because of the qualification put on “High Court”, the adjectival phrase has been added after “Governor”.

Mr. President : It is better for the honourable Member to leave it there.

Mr. Naziruddin Ahmad : I shall then leave it there, Sir.

Shri T. T. Krishnamachari : Sir, I do not propose to move amendment Nos. 478 and 479. Amendment No. 556 will cover both, which I move:

“That for the Explanation to clause (1) of article 288, the following be substituted :

Explanation.—The expression ‘law of a State in force’ in this clause shall include a law of a State passed or made before the commencement of this Constitution and not previously repealed, notwithstanding that it or parts of it may not be then in operation either at all or in Particular areas.’ ”

(Shri Ajit Prasad Jain did not move his amendment No. 603.)

[*The following amendment was taken as moved :

*“That in clause (2) of article 289, for the words “any property used or occupied for the purposes thereof, or any income accruing or arising therefrom” the words “any property used or occupied for the purposes of such trade or business, or any income accruing or arising in connection therewith” be substituted.”]

Mr. President : Amendment 481.

“That for article 294, the following article be substituted:—

As from the commencement of this Constitution,

- (a) all property and assets which immediately before such commencement were vested in His Majesty for the purposes of the Government of the Dominion of India and all property and assets which immediately before such commencement were vested in His Majesty for the purposes of the Government of each Governor’s Province shall vest respectively in the Union and the corresponding State; and
- Succession to property, assets, rights, liability and obligations in certain cases.

- (b) all rights, liabilities and obligations of the Government of the Dominion of India and of the Government of each Governor's Province, whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations respectively of the Government of India and the Government of each corresponding State,

subject to any adjustment made or to be made by reason of the creation before the commencement of this Constitution of the Dominion of Pakistan or of the Provinces of West Bengal, East Bengal, West Punjab and East Punjab.' ”

Mr. Naziruddin Ahmad : Sir, I move:

“That in amendment No. 481 of List II in the proposed article 294

- (a) comma be inserted after the word ‘Constitution’ in line 1,
 (b) a comma be inserted after the word ‘Constitution’ in line 23.”

These are punctuation amendments that would have to be accepted if the Drafting Committee is in a favourable mood.

[*The following amendments were taken as moved :

*“That in sub-clause (a) of clause (1) of article 295, for the words ‘the Commencement of this Constitution’ the words ‘such commencement’ be substituted.”

“That in sub-clause (a) of clause (1) of article 295, for the words ‘the Government of India’ the words ‘the Union’ be substituted.”

“That in article 296, after the words ‘His Majesty’, in the first place where they occur the words ‘or, as the case may be, to the Ruler of an Indian State’ be inserted.”

“That in the proviso to article 296, after the words ‘His Majesty’ the word, ‘or to the Ruler of an Indian State’ be inserted.”

“That to article 296, the following Explanation be added:—

“*Explanation.*—In this article the expressions ‘Ruler’ and ‘Indian State’ have the same meanings as in article 363.”

“That in the proviso to clause (1) of article 316, for the words ‘under an Indian State’ the words under the Government of an Indian State’ be substituted.”

Shri T. T. Krishnamachari : Sir, I move amendment No. 557 and 558 in place of amendment No. 488, 489 and 490 :

“That in clause (c) of article 319, for the words ‘as the Chairman of a State Public Service Commission other than a Joint Commission’ the words ‘as the Chairman of the Union Public Service Commission or as the Chairman of a State Public Service Commission’ be substituted.”

“That in clause (d), for the words ‘as the Chairman of any other State Public Service Commission’ the words ‘as the Chairman of that or any other State Public Service Commission’ be substituted.”

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

“That in amendment No. 557, in clause (c) of article 319 for the words ‘as the Chairman of the Union Public Service Commission or as the Chairman of a State Public Service Commission (proposed to be substituted)’ the words ‘as the Chairman of a State Public Service Commission or as the Chairman of a Joint Commission’ be substituted.”

“That in amendment No. 558 in clause (d) of article 319 for the words ‘as the Chairman of that or any other State Public Service Commission’ the words ‘as the Chairman of any other State Public Service Commission’ be substituted.”

These amendments of the Drafting Committee are to my mind an instance of the amazing fickleness of mind that they have displayed on this subject

Mr. Naziruddin Ahmad : It is no longer amazing: it has been a day to day affair.

Shri H. V. Kamath : Within two days they have changed their mind twice and revised their draft. These two lists represent the fruit of their ceaseless labours. I do not know whether they would again change their mind, if you would be so good as to extend the time for amendments beyond tomorrow.

Mr. President : You need not entertain any such fears.

Shri H. V. Kamath : But as it is I feel that the new amendments that they have suggested constitute a radical departure from the revised draft presented to us yesterday morning.

My amendments are in conformity with the amendment on article 319 which I moved yesterday. I do not see any point in the changes suggested by the Drafting Committee twice within the last few days.

Mr. President : They are only going back to the original proposition passed in the Second Reading.

Shri T. T. Krishnamachari: Going back to the Draft as approved by the House.

Shri H. V. Kamath : I do not know why they should have changed their mind about the revised draft.

Shri T.T. Krishnamachari : Because the honourable Mr. Kamath wills it otherwise!

Shri H. V. Kamath : I did not hear what he said! Anyway, I would prefer that, instead of the Chairmanship of the Union Public Service Commission or the Chairmanship of the State Public Service Commission as suggested by the Drafting Committee, the person who vacates office under clause (c)—that is to say a member other than a Chairman of the Union Public Service Commission, should be eligible for the Chairmanship of the State Public Service Commission or the Chairmanship of the Joint Commission. The Drafting Committee visualises the possibility of such a person being appointed to the Chairmanship of the Union Public Service Commission. I do not think it is quite a healthy precedent to set up that a Member of the Public Service Commission on ceasing to hold office as Member should be eligible for appointment as Chairman of the same Commission the membership of which he has vacated. He may be eligible for the Chairmanship of the State Public Service Commission or the Joint Commission.

As regards the second amendment, that refers to clause (d) of article 319. It deals with the prohibition of holding office by a member other than a Chairman of a State Public Service Commission on his ceasing to hold office. My amendment seeks to make him eligible for the Chairmanship of any other State Public Service Commission but not of that particular State Public Service Commission. The Drafting Committee's new amendment makes him eligible for the Chairmanship of that or of any other State Public Service Commission. The revised draft had omitted "that State Public Service Commission". But now they are restoring the *Status quo*. It would be healthier if he were not eligible for the Chairmanship of that State Commission from which he has resigned but only for that of any Commission other than that of which he was a Member.

Sir, I move.

Mr. President : There is an amendment 491 to article 320 and there is a further amendment No. 559. I think that is an addition.

Shri T. T. Krishnamachari : Amendment 559 is an addition. It meets the objections raised in regard to that particular article.

Mr. President : We shall take that up later.

Shri T. T. Krishnamachari : That may be taken up now.

Mr. President : I take it as moved.

Amendment moved :

“That for clause (4) of article 320, the following clause be substituted:—

‘(4) Nothing in clause (3) shall require a Public Service Commission to be consulted as respects the manner in which any provision referred to in clause (4) of article 16 may be made or as respects the manner in which effect may be given to the provisions of article 335.’”

Shri T. T. Krishnamachari : Amendment 491 may not be necessary because Kamath has moved amendments 394 and 395—practically the same amendment.

Mr. President : Very well. Then we come to article 351—amendment No. 492.

Dr. P. S. Deshmukh : What have you done with amendment 559 to article 320, Sir ?

Mr. President : I have taken it as moved. You are referring to amendment No. 559. Do you want to speak, Dr. Deshmukh?

Dr. P. S. Deshmukh : Yes, Sir. I am sorry to say that this new amendment does not appear to be at all satisfactory. First of all, Sir, it is very circuitous in its drafting. It is like a definition known as circular. The amendment reads:

“Nothing in clause (3) shall require a Public Service Commission to be consult as respects the manner in which any provision referred to in clause (4) of article 16 may be made or as respects, the manner in which effect may be given to the provisions of article 335.”

If this amendment is considered satisfactory by the representatives of the Scheduled Castes and Scheduled Tribes I would at least beg of them that my amendment to 335 may be accepted. If that is done, then the whole thing would be clearer; otherwise it will restrict the scope of this article so far as the backward classes are concerned if not have the effect of excluding them; because, from 335 already the word backward class has been by a mistake, omitted and that was the reason why I proposed that the word should be added to 335.

Mr. President : You are referring to amendment 530.

Dr. P. S. Deshmukh : Yes, Sir. So if we have the amendment now moved by Mr. T. T. Krishnamachari I would at least request my Friend Mr. T. T. Krishnamachari whether he would accept my amendment which seeks to add backward classes to 335. If this is done then of course I would have no objection because this will bring the whole matter on all fours with the other articles on the subject : Otherwise it will be very curious because in article 16(4) we have the word “backward class” whereas in 335 there is no mention of backward class, and we have only two groups—the Scheduled Castes and the Scheduled Tribes. It would be absolutely incongruent and inconsistent. If my Friend, Mr. T. T. Krishnamachari would like this amendment to be accepted, I would be prepared to accept this provided he has no objection to the inclusion of backward class in 335: otherwise we would be saying one thing with respect to one provision but we would be including only the word backward class without mentioning Scheduled Castes or Scheduled Tribes. If this amendment is accepted it would mean that there is no mention of the Scheduled Castes or Scheduled Tribes either in 16(4) or in 320. But in article 335 there is nothing else but Scheduled Castes and Scheduled Tribes, and no mention of backward class.

I would like in the alternative, if my Friend is not prepared to accept my amendment, that this matter may be postponed because we may probably discuss the question this evening.

Shri T. T. Krishnamachari : I may mention that 16(4) is an enabling provision in regard to special representation for backward classes. 335 is an enabling provision in regard to taking into consideration the claims of Scheduled Tribes and Scheduled Castes. These two enabling provisions are brought together in this particular clause. It has merely been made permissible for the Governments not to consult the respective Public Service Commissions in these cases because of the mandatory character of the provision in clause (3) which requires the Public Service Commission to be consulted on every matter. So there is no question of any injustice being done either to the Scheduled Castes and Scheduled Tribes or to the backward classes or any preference being given to one over the other. I do not think my honourable Friend need have any fear that the rights of the backward classes have been taken away or anything has been done to their detriment.

Dr. P. S. Deshmukh : I do not feel at all convinced by my Friend's explanation. Article 16(4) reads:

“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.”

Backward class has been used as a general term as will be evident from the speech made by Dr. Ambedkar when the House was considering article 16. It includes not only Scheduled Castes and Scheduled Tribes but also other educationally and economically backward communities. Now, my honourable Friend curiously enough wants to play between 16(4) and 335. His contention is absolutely astounding. He does not want to give the same privileges which have been given to the Scheduled Castes and Scheduled Tribes so far as reference to the Public Service Commission is concerned, although according to article 16(4) these three groups of people are supposed to get the benefit of this protection. If the reservation is made and the phrase “appointments and posts” is present in article 16(4), I think it is absolutely wrong to take the view which he is taking. I know the point of view from which my Friend is looking at the whole thing. I think he will be doing a real disservice to the backward classes and in a sort of underhand way harming their interests, because when 16(4) was provided it was for backward classes as a whole without any reference to a particular group or groups. From that point of view I request that this matter be left over for the present. It would be very wrong not to add the word “backward classes” to 335.

Pandit Thakur Das Bhargava : May I put one question to my honourable Friend? How is it wrong if the Scheduled Castes and Scheduled Tribes are given more rights than the “backward classes”? They should be given more rights. Are they not more backward?

Dr. P. S. Deshmukh : I do not claim to get more rights or less rights than the backward classes. All I want is equal rights. If “backward classes” was to include not only Scheduled Tribes and Scheduled Castes as well as the economically and educationally backward other castes, and if you are now going to exclude the backward classes simply because they have not formed themselves into one group or agitated I have nothing to say; but if you are going to drive them to that situation I do not think it will be good for the nation or for you. So I should very much like that the intention to include the backward classes as additional and apart from the Scheduled Castes and Scheduled Tribes should not be given up in this way. Originally, there was no intention of even specifying these two groups and my honourable Friend who interrupted just now was the best and most vehement exponent that the word should be “backward classes” only—the other groups should not be separately and specifically referred to.

Shrimati G. Durgabai : (Madras: General): On a point of order, the Drafting Committee has not made any change in article 335. Therefore, I do not think any amendment would arise

Mr. President : Let him finish.

Dr. P. S. Deshmukh : So my friend is really speaking against his own contention.

Pandit Thakur Das Bhargava : It is the decision of the House I want that all the amenities may be extended to all backward classes but the decision of the House is against my friend's present contention.

Dr. P. S. Deshmukh : If he is prepared to admit that it is in spite of himself, I can understand; but when he wants to lend support to the fact that it is not necessary to retain "backward classes", he is arguing against himself.

Mr. President : We have had enough discussion on this article yesterday also and today.

Now I pass on to 351. There is no amendment to 492? Then 352. There is no amendment to this either, 353-there is no amendment. 357-there is none. Then 365-amendment 496. It is being substituted by 561. Then we come to 366. There are three amendments 497, 498 and 499.

There is an amendment by Mr. Naziruddin Ahmad No. 606.

Mr. Naziruddin Ahmad : Sir, I beg to move:

"That in amendment No. 499 of List II, in the proposed now clause (IS) of article 366, the following be added at the end :

Mr. President : It does not arise. Then we come to 367. There is an amendment No. 500. To this there is an amendment No. 607 by Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : I do not move 607, Sir.

Shri T. T. Krishnamachari : 500 will not be moved, Sir. Instead 562-A is the amendment which will be moved:

"562A. That in article 367, the following clause be added :

'(3) For the purposes of this Constitution 'foreign State' means any country which is outside the territorial jurisdiction of the Union :

Provided that, subject to the provisions of any law made by Parliament, the President may by order declare any country not to be a foreign country for such purposes as may be specified in the order.' "

"492. That in article 351, the words 'so specified' be deleted."

"493. That in clause(1) of article 352, the brackets and words '(in this Constitution referred to as a 'Proclamation of Emergency)' be omitted."

"494. That in clause (b) of article 353, for the words 'the Government of India or officers and authorities of the Government of India' the words 'the Union or officers and authorities of the Union' be substituted."

"495. That in sub-clause (b) of clause (1) of article, 357, for the words 'the Government of India or officers and authorities of that Government' the words 'The Union or officers and authorities there or be substituted."

"561. That in article 365, for the words 'the President may hold' the words 'it shall be lawful for the President to hold' be substituted."

"497. That clause (12) of article 366 be omitted."

"498. That clauses (13), (14), (15), (16), (17), and (18) of article 366, be renumbered as clauses (12), (13), (14), (15), (16) and (17) respectively."

"499. That after clause (17) as so renumbered, the following clause be inserted:

'(18) Proclamation of Emergency' means a Proclamation issued under clause (1) of article 352;'

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

“That in amendment No. (with your permission, Sir, I shall substitute 562-A for 500) 562-A of List IV, the proviso to the proposed new clause (3) of article 367 be deleted.”

Again, the Drafting Committee has revised the draft which they submitted to the House yesterday and today they have come out with a new draft of the article. It is a happy augury for the future of our country that the Constitution is being drafted by a team of wise men whose minds, are continually open to the light of truth, but my very limited vision does not enable me to grasp the scope of this proviso. To my mind, all States that are not within the territorial jurisdiction of the Indian Union must be regarded as foreign states. So long as we are not One World, I suppose these separate sovereign states will continue to exist and all states outside our jurisdiction should be regarded as foreign States. Of course if we want to treat any particular State on a special footing, then Parliament can legislate with regard to that State. We used to have what was called Imperial Preference, now Commonwealth preferences. Most favoured Nation clause in treaties and the like. I do not see why we should have a proviso here that the President may declare that such and such a State is not a foreign State. We may lay down generally that all States not within the jurisdiction of India are foreign States. It is not at all necessary, in my humble judgement that a proviso of this sort should be there in a delightfully vague form.

Shri R. K. Sidhwa : I have given notice of an amendment to this article, No. 608. I support the arguments of Mr. Kamath. I want clarification from the Drafting Committee as to why this proviso has been made. We have definitely stated yesterday that those who accept foreign citizenship their own citizenship will be affected. Those who accept citizenship of a foreign country shall not be entitled to any rights or privileges of the citizens of the Republic of India. I want to know why this power has been vested in the President to make an exception and declare any country not to be a foreign country. What is the idea behind it? We must have some information in the matter from Dr. Ambedkar. We are rather perplexed about this.

The Honourable Shri K. Santhanam : Sir, I am afraid amendment No. 562-A as drafted is defective. In the first part of it ‘foreign State’ is defined. In the proviso the President is authorised to declare a foreign country as such. Therefore the word ‘country’ or ‘State’ should be used in both places. You cannot define a foreign State and allow the President to declare a foreign country. There is confusion.

Shri R. K. Sidhwa : That does not solve the objection I have raised.

Mr. President : It was not said in reply to your objection.

Shri R. K. Sidhwa : If we get an answer to my doubts it will be helpful.

The Honourable Dr. B. R. Ambedkar : Sir, if my friend Mr. Sidhwa were to refer to clause (12) of article 366 in the draft as revised by the Drafting Committee, he will notice that there is really nothing new in sub-clause (3) of article 367 which is the subject, matter of amendment No. 562-A. Article 366 is a definition article and clause (12) there attempts to define what a foreign State is within the meaning of the Constitution. It was felt that clause (12) of article 366 as passed by the Assembly was rather cryptic and too succinct and that it was desirable to give it a more elaborate shape and form. Consequently the Drafting Committee thought that the best way would be to delete clause (12) of article 366. This is done by amendment No. 497 and it is sought to be replaced now by the present amendment No. 562-A. In the draft as presented to the House with the report the main provision was that it was open to the President to declare by an order that a certain country was not

a foreign State so far as India was concerned. The main part of clause(3) of article 367 is just the same. The only thing that has been added is that Parliament may legislate on this subject and, while legislating, endow the President with power to proclaim by an order what country is a foreign State and what country is not a foreign State. It was further felt by the Drafting Committee that it was not desirable to confer this power in such rigid terms as would follow from the proviso if the words "for such purposes as may be specified in the order" were not there. The President and Parliament may then be confronted with two inescapable alternatives, either to say that a foreign country was a foreign State or to say that a certain country was not a foreign State with the result that the subjects of the country which is declared not to be a foreign State would become automatically citizens of India and be entitled to all the rights which the citizens of India are entitled to under this Constitution. It may be in the interests of this country that, while it might be desirable to recognise a certain foreign country as not a foreign State, it should be limited to such purposes as may be specified in the order, so that while making the order the President would have his position made perfectly elastic enabling him to say that while we declare that a certain country is not a foreign State the subjects of that foreign State will be entitled only to certain rights and privileges which are conferred upon the citizens of India and not to all. It is for that purpose and in order to make a provision for those other matters that we thought it desirable to transpose clause(12) of article 366 and bring it as clause(3) of article 367.

Mr. President : Article 368, amendment No. 609, Mr. Naziruddin Ahmad.

Shri T. T. Krishnamachari : No, Sir. We are not moving amendment 501 to article 368.

Sir, I move :

"That in clause (2) of article 370, for the words, brackets, letters and figure 'in paragraph (ii) of sub-clause (b) or in the second proviso to sub-clause (d) of clause (1)', the words, brackets, letters and figure 'in paragraph (ii) of sub-clause (b) of clause (1) or in the second proviso to sub-clause (d) of that clause' be substituted."

Sir, I also move:

"That in clause (1) of article 379, for the words 'shall exercise' the words 'shall be the provisional Parliament and shall exercise' be substituted."

Mr. President : There is an amendment to this, No. 610 by Mr. Sidhva.

Shri R. K. Sidhwa : Sir, I move:

"That amendment No. 503 of List II be deleted."

The word that I object to is the word "Provisional" before Parliament. In the last session we had discussed this matter and we said that the word "provisional" was not dignified both for the President and also for the Parliament. After all, by an Act the Parliament comes into being from the 26th January. It may be in a sense provisions but it is a Parliament duly authorised under In this Constitution, and therefore the word "provisional" does not look proper. I feel that the word "provisional" should be deleted which is now sought to be inserted. With these words, I commend my amendment to the acceptance of the House.

Mr. President : Mr. Balkrishna Sharma, your amendment Nos. 416 and 417 relating to this article 379, do you want to move them ? You can move them if you want.

Pandit Balkrishna Sharma : Mr. President. Sir, I move:

[Pandit Balkrishna Sharma]

“That in clause (1) of article 379, for the words ‘the body functioning as the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution’ the words ‘the Constituent Assembly of India’ be substituted; and in the subsequent clauses and articles for the words ‘the Constituent Assembly of the Dominion of India’ wherever they occur, the words ‘the Constituent Assembly of India’ be substituted.”

If this amendment of mine is accepted by the House, then the article will read:

“Until both Houses of Parliament have been duly constituted and summoned to meet for the first session under the provisions of this Constitution.”

and from here those words should be deleted.

“The Constituent Assembly of India shall exercise all the powers and perform all the duties conferred by the provisions of this Constitution on Parliament.”

My reasons for proposing this amendment are that I somehow do not relish the idea of bringing in this Constitution the words “the Constituent Assembly of the Dominion of India.” I think that even though those words find a place in the Government of India Act, 1935, as adapted, i.e. our Independence Act, yet in our Constitution it will be better if we avoid that phraseology. You will see Sir, that in the Preamble where we have resolved to give unto ourselves this Constitution, we have done so in our right, and the Constituent Assembly there is the sole authority to give this Constitution to ourselves. Now, if we bring in these words “the Constituent Assembly of the Dominion of India”, we shall be perpetuating a situation which somehow historical circumstances have forced upon us, and we do not want that that name should be there. For this reason, I have proposed that this amendment of mine should be accepted by the House so that the only words which will be used will be the Constituent Assembly of India and not the Constituent Assembly of the Dominion of India.

My second amendment is No. 417. I move :

“That in clause (2) of article 379, for the words ‘the provisional Parliament’ wherever they occur, the words ‘the Constituent Assembly of India’ be substituted.”

My reason for placing this amendment before the House is that it is as the Constituent Assembly and not in any other capacity that we have taken up the supreme authority of governing the country under the Adaptation Act, and so long as a duly constituted Parliament does not come into existence, it will not be proper for us to give up the ghost. Why should we commit harakiri before time? After the Constitution comes into force, we shall disappear, but I do not see any reason why this name “the Constituent Assembly of India” should be changed to Provisional Parliament at this time; because if we retain the name, then certain functions which are being performed at present by the Constituent Assembly will continue to be performed, but if we change our name, then the interpretation might be put that we as the Provisional Parliament are quite a different body from the one which exists at present, and that, therefore, those functions which we are performing through one Secretariat should automatically come to an end. Therefore I submit that it is not the Provisional Parliament that should function in future but that the Constituent Assembly of India should continue to function in future.

The Honourable Shri K. Santhanam : Not with all the present powers.

Pandit Balkrishna Sharma : My friend Mr. Santhanam says that the Constituent Assembly loses all powers on the 26th of January. But permit me to say, Sir, that on the 26th, January we cannot lose all the powers for the simple reason that,—and Mr. Santhanam will see—article 379 definitely states

that until the new Parliament comes into existence, this Constituent Assembly of India shall exercise all the powers and perform all the duties conferred by the provisions of this Constitution on Parliament, and because this Constituent Assembly has to perform the functions which the future Parliament will perform, it cannot be said that we shall cease to function on the 26th January. It was said that after the 26th of January the Constitution-making part of us will disappear. There is no doubt about it. It will disappear, but the legislative powers which we have been exercising even during this period shall continue to be vested in us and, therefore, I think we should not change the name "Constituent Assembly of India" to "Provisional Parliament" nor should we keep the name 'Constituent Assembly of the Dominion of India'. I take it that perhaps this "Dominion of India" was inserted in order to distinguish our Constituent Assembly from the Constituent Assembly of the Dominion of Pakistan, but I see no reason why we should stick to it. I have said that in our Preamble we have definitely and solemnly resolved as the Supreme Body to give this Constitution to the country. Why should we call ourselves as the Constituent Assembly of the Dominion of India? With these words, Sir, I commend these two amendments to the acceptance of the House.

Shri H. V. Kamath : Mr. President, I move, Sir, amendment No. 563 of List IV which is more or less identical with the one moved by my honourable Friend Pandit Balkrishna Sharma. I agree with him so far as the expression "the Dominion of India" is concerned; it is an unhappy expression and it should be quite adequate for our purposes to simply state "the Constituent Assembly of India". As regards the other point which my Friend Pandit Balkrishna Sharma made out, that the Constituent Assembly shall and ought to continue in existence even after the Constitution commences and the Republic is inaugurated, I feel I cannot agree with him on that issue. (*Pandit Balkrishna Sharma:* In France it was so). I do not know what the position in France was, but to my mind and so far as my reading of history goes, in all countries once the Constitution is inaugurated the Constituent Assembly has become *functus officio*. The Constitution will come into force on the 26th of January 1950 and once that happens, the functions of this Assembly in its capacity as the Constitution-making body cease, and this Constituent Assembly will only continue to function in a legislative capacity, pending elections under the new Constitution. Therefore it is correct to say that the Assembly will be the Provisional Parliament, because it is only saying the same thing in other words. Today, the Assembly is called the Constituent Assembly of India (Legislative) when it engages in the functions of legislation, but under the new Constitution we want to Confer on this body all the powers of Parliament and unless we call it the Provisional Parliament, that body cannot assume to itself all the powers that the Constitution seeks to confer on Parliament. Therefore, I do not think that the second point which my honourable Friend, Pandit Balkrishna Sharma made out is correct. I therefore move amendment No. 563 of List IV and commend it to the House for its acceptance though on somewhat different grounds than the one suggested by Pandit Balkrishna Sharma.

I move:

"That with reference to amendment No. 503 of List II, in clause (1) of article 379, for the words the body functioning as the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution' the words 'the Constituent Assembly of India' be substituted."

Mr. President : There are two other amendments in List IV.

Shri T. T. Krishnamachari : May I suggest that in considering article 379 amendment No. 564 might also be taken.

Mr. President : Yes. I take it as moved:

“That in clause(5) of article 379, for the words ‘after such commencement’ the words on such commencement be substituted.”

There are articles 385, 388 and 392 and there are no other amendments to the amendments of the Drafting Committee.

“565. That in article 385, for the words ‘such commencement’ the words ‘the commencement of this Constitution’ be substituted.”

“566. That in clause (1) of article 388, for the words ‘The President of the Union’, in the two places where they occur, the words ‘The President of India’ be substituted.”

“504. That in clause (2) of article 388, for the words ‘the provisional Legislature’ the words ‘the Legislature’ be substituted.”

“571. That in article 390, for the words ‘out of such fund’ the words ‘out of either of such Funds’ be substituted.”

Shri H. V. Kamath : There is amendment No. 611.

Shri T. T. Krishnamachari : We are considering amendments that appear in List IV and not those appearing in List II.

Shri H. V. Kamath : My amendment relates to List VI.

Mr. President : I am now taking List IV. I am taking the amendments to article 388.

Shri T. T. Krishnamachari : I am not moving 392 as it appears in List II and amendment No. 505 is not being moved and instead of that 572 is being moved.

“572. That for clause (3) of article 392, the following clause be substituted :

‘(3) The powers conferred on the President by this article, by article 324, by clause (3) of article 367 and by article 391 shall, before the commencement of this Constitution, be exercisable by the Governor General of the Dominion of India.’ ”

Mr. President : So I take it that this 505 is replaced by 572.

Shri T. T. Krishnamachari : Yes, Sir.

Mr. President : There is an amendment to 572 standing in the name of Mr. Kamath, Amendment No. 573.

Shri Mahavir Tyagi : Sir, I could not follow Mr. Krishnamachari’s reply.

Mr. President : He only suggested that instead of 505 the Drafting Committee would move 572 and notice is given of that. He is only substituting it.

Shri H. V. Kamath : My amendment No. 573 is only a verbal amendment.

Mr. President : These are all the amendments in List IV. I shall take up the remaining amendments in List IV and there are certain other amendments which have come in later and we shall take them up tomorrow. I have received requests from two honourable Members—one from Shri A. V. Thakkar and another from Prof. Shibban Lal Saksena. Shri Thakkar wants an amendment to clause (6) of article 238 regarding the appointment of a Minister for Tribal welfare in Madhya Bharat, Rajasthan, Travancore-Cochin and Vindhya Pradesh etc. This is a new amendment altogether which would not ordinarily be taken but if the Drafting Committee has no objection, I can permit that, but it depends upon the Drafting Committee. I understand that the Drafting Committee would like to consult the States Ministry before they can agree to anything like this. So we can do it tomorrow if by that time you have made up your mind.

The Honourable Shri K. Santhanam : In that case it must be brought in by the Drafting Committee and not by an individual Member.

Mr. President : If they agree, they might.

Pandit Hirday Nath Kunzru : What has the agreement of the Drafting Committee got to do with the matter. It may or may not accept my honourable Friend's amendment, but it is for you, Sir, to decide whether it should be moved.

Mr. President : We have so far taken only amendments which are amendments to amendments of the Drafting Committee. This is not an amendment to any amendment moved by the Drafting Committee and so ordinarily under that rule I would have to rule it out, but I am making a point in favour of the amendment of Mr. Thakkar especially if the Drafting Committee after consulting the States Ministry finds that it can accept it at that stage we can take it.

Prof. Shibban Lal Saksena : It is at your discretion.

Pandit Hirday Nath Kunzru : Do you permit Mr. Thakkar to move his amendment whatever the view of the Drafting Committee may be ? It may reject that amendment, but let Mr. Thakkar place that amendment before the House.

Mr. President : I have not allowed any amendment which does not arise out of the amendments of the Drafting Committee so far.

Shri T. T. Krishnamachari : The amendment may be accepted, but we will have to ask our advisers whether it would fit in and probably if we get their reply in time we shall finally decide that tomorrow.

Mr. President : Prof. Shibban Lal Saksena wants to move an amendment which came in rather late. So, that is out of time. But, otherwise, it is a valid amendment. It says that it refers to one of the clauses relating to language which clause was adopted as a matter of compromise and that some change has been introduced by the Drafting Committee at this stage and that he would like to move that amendment.

The Honourable Shri K. Santhanam : The provisions in the rules give you no option, Sir. They are absolutely mandatory. It is said that no other amendment shall be moved.

Mr. President : This is an amendment to an amendment; it was given late.

The Honourable Shri K. Santhanam : I am only referring to the other amendment.

Mr. President : I said, then I should have to rule it out unless the Drafting Committee is prepared to accept it.

Shri Mahavir Tyagi : The amendment is important from the point of view that it pertains to an agreement and therefore the Drafting Committee might reconsider it. I would appeal to you also, Sir. After all, the Drafting Committee's amendments have come as a surprise on us all; especially on matters of compromise and agreements, no amendment should have been allowed. This is an important matter and I would therefore request you to kindly consider

Mr. President : Which is your amendment, Mr. Shibban Lal Saksena? What is the number of the amendment?

Prof. Shibban Lal Saksena : It is not printed here. I gave it yesterday; but it was ruled out because it was late. It is not in the List. My amendment is "that for clause (3) of article 348, the original clause (3) be substituted."

Mr. President : He wants to substitute the original article as it was passed in the Second Reading stage.

Prof. Shibban Lal Saksena : Not the whole article; clause (3) only, Sir.

Shri Mahavir Tyagi : Many of the Members agree with Prof. Shibban Lal Saksena.

Mr. President : The amendment is that clause (3) of article 348, be restored in the form in which it was passed in the Second Reading stage. We shall consider this tomorrow.

The Honourable Shri Purushottam Das Tandon (United Provinces: General): May I have a word, Sir, before you rise?

Mr. President : Yes.

The Honourable Shri Purushottam Das Tandon : So far as this amendment of Prof. Shibban Lal Saksena is concerned, I desire to point out that even in case it is not permitted technically as an amendment—because it was not delivered to the office in time, even then I submit that the whole proposition, a new proposition, brought in by the Drafting Committee can be opposed. I was thinking of opposing it. I did not move any amendment; but I reserved to myself the right of opposing anything moved in this House. That right cannot be taken away from me and I think that I could oppose the Drafting Committee's amendment.

Mr. President : That of course is clear. Every amendment of the Drafting Committee or of any other Member may be opposed and voted down.

The Honourable Shri Purushottam Das Tandon : Then, it comes to the same thing. If my opposition succeeds, the result would be that the original proposition would be restored. If you accept Prof. Saksena's amendment for procedural purposes, we can discuss that amendment because that also desires the restoration of the original clause.

Mr. President : What the effect of that Opposition will be, will also be a matter for consideration, if it succeeds.

The House will now stand adjourned till ten o'clock tomorrow,

Shri R. K. Sidhwa : Will you apply the guillotine, Sir, tomorrow?

Mr. President : Yes; at 11.30 I shall apply the guillotine and allow Dr. Ambedkar to reply and then there will be voting.

The Assembly then adjourned till 10 of the Clock on Wednesday, the 16th of November 1949.

CONSTITUENT ASSEMBLY OF INDIA

Wednesday, the 16th November 1949

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.

DRAFT CONSTITUTION—(Contd.)

Mr. President : We shall now take up

Mr. Naziruddin Ahmad (West Bengal: Muslim): I have a point of order. After the revised Draft Constitution was available to us, a large number of corrections in the shape of list of corrigenda was supplied—that is List No. 1, and as I understand the Constitution as it was accepted by the House for preliminary purposes, the revised draft was accepted subjected to corrections in List No. I. After that, on the same day, *i.e.*, the 14th of this month another list was supplied *i.e.*, List II. Then yesterday another big list was supplied—*i.e.*, List III. The total number of changes sought to be introduced by these lists will exceed 200. I would like to know whether the decision of the House that the revised Draft Constitution must be taken into consideration subject to these correction lists, does also apply to corrigenda Nos. II and III. They came to us after our decision to accept the Draft subject to corrigenda list No. I. In other words, whether corrigenda II and III have any retrospective effect. If they are to be given retrospective effect, this will open up a great deal of difficulties. Some amendments are not merely formal but substantial. That would affect the rights of Members to give notices of amendments with reference to these. They have been delivered day before yesterday and yesterday after the decision was taken. What is more, some of my amendments which I did not move have been stolen and incorporated in these final corrigenda lists.

Mr. President : Do you object even to those corrections which have been stolen from your amendments?

Mr. Naziruddin Ahmad : No, I am extremely grateful to the Drafting Committee for doing me this honour.

Mr. President : As I understand, the corrections are only corrections, that is to say, they represent what was there, and which was not in the printed thing because of printer's mistake. I understand the correction is only to that and nothing more. Therefore all the corrections must be taken as part of the Constitution, as reported by the Drafting Committee.

Amendment of Article—(Contd.)

Mr. President : I will now go through the other amendments quickly, of which we have got notice here. I shall take up now List IV.

There is amendment No. 548 to article 32, and that is by the Drafting Committee.

An Honourable Member : List No. IV?

Mr. President : Yes. We finished List II yesterday, and I am now going to take up amendments in List IV.

Dr. P. S. Deshmukh (C.P. & Berar: General): What about List III?

Mr. President : List III I am not taking up, because it came out of time.

Dr. P. S. Deshmukh : But List III is only a small list, Sir.

Mr. President : But List III came after time.

Dr. P. S. Deshmukh : Sir, there was only a slight delay, and in view of the fact that we are considering most of the amendments, that also may please be considered.

Mr. President : As I said, I would allow any particular amendment if any Member insisted upon it, on its merits, but the List, as a list, I would not take.

Dr. P. S. Deshmukh : Sir, I mean only amendment No. 530 of List III.

Mr. President : That we discussed yesterday.

Dr. P. S. Deshmukh : Shall we take it as having been moved?

Mr. President : Yes, I take now, List IV and amendment No. 548 to article 32. That is by the Drafting Committee. I do not see there is any amendment to that amendment. So I take it as moved:

“That in clause (4) of article 32, for the word ‘rights’ the word ‘right’ be substituted.”

Then article 48, and amendment No. 549. Now, this is an amendment which covers the amendment which has been moved by Professor Shibban Lal Saksena.

Prof. Shibban Lal Saksena (United Provinces: General): I withdraw that amendment.

Mr. President : You withdraw that amendment, and we accept this in place of that No. 549 reads :

“That in article 48, for the words ‘for improving the breeds of milch and draught cattle including cows and calves and for prohibiting their slaughter’ the words ‘for preserving and improving the breeds and prohibition the slaughter of cows and calves and other milch and draught cattle be substituted.”

Shri T. T. Krishnamachari (Madras: General): May I suggest that article 106 and amendment to that in List VII may be taken up?

Mr. President : In place of this?

Shri T. T. Krishnamachari : No, it is an independent one.

Mr. President : I will be coming to that later.

Article 148, amendment No. 551. There is an amendment to that, No. 618. I think that is the latest amendment of the Drafting Committee?

Shri T. T. Krishnamachari : Yes, Sir.

Mr. President : Which shall I take? Shall I take No. 618?

Shri T. T. Krishnamachari : No. 618 is the final amendment.

Mr. President : There are three amendments to article 148 *i.e.* 551, 552 and 553.

Shri T. T. Krishnamachari : But we have dropped all that and amendment No. 618 is the final one.

Mr. President : There is only one amendment?

Shri T. T. Krishnamachari : Yes.

Mr. President : And we leave the other clauses as they are?

Shri T. T. Krishnamachari : Yes, Sir.

Mr. President : Amendment No. 618 of List VI:

“That for clause (5) of article 148, the following clause be substituted:

‘(5) Subject to the provisions of this Constitution and of any law made by Parliament, the conditions of service of persons serving in the Indian Audit and Accounts Department and the administrative powers of the Comptroller and Auditor-General shall be such as may be prescribed by rules made by the President after consultation with the comptroller and Auditor General.’ ”

Mr. President : There is amendment No. 593 to this, of Shri Raj Bahadur.

Shri T. T. Krishnamachari : No. 593 will drop out Sir, because of this amendment. That will no longer be applicable because of this amendment.

Shri Raj Bahadur (United State of Matsya): I do not want to move it.

Mr. President : Then I come to article 222, and amendment No. 555 of the Drafting Committee. There is no amendment to that, by any Member.

“That in clause (1) of article 222, after the words ‘The President may’ the words ‘after consultation with the Chief Justice of India,’ be inserted.”

Mr. President : Then article 288—amendment No. 556. That is also by the Drafting Committee. It was moved yesterday.

Article 319, amendment 557.

Shri T. T. Krishnamachari : That was also moved yesterday.

Mr. President : No. 558 was moved yesterday, also 559. Then we come to article 347 and amendment No. 560.

Shri R. K. Sidhwa (C.P. & Berar: General): What about Nos. 557 and 558 ?

Mr. President : They were moved yesterday. We now come to article 347. Amendment 560.

“That for article 347, the following article be substituted :

‘347. *Special provision relating to language spoken by a section of the population of a State.*—On a demand being made in that behalf, the President may, if he is satisfied that a substantial proportion of the population of a State desire the use of any language spoken by them to be recognised by that State, direct that such language shall also be officially recognised throughout that State or any part thereof for such purpose as he may specify.’ ”

Dr. P. S. Deshmukh : Sir, before you proceed further, may I request you to allow me to move amendment No. 531 which is consequential to No. 530 ? I will only formally move it from List III. It is a consequential amendment, and if this is accepted, that will be necessary.

Mr. President : I will take that as moved. When it comes to voting, remind me. I take it as moved.

Dr. P. S. Deshmukh : It is about an additional article 340A.

“That after article 340, the following new article be inserted:—

- ‘340A. (1) The President may after consultation with the Governor or Rajpramukh of a State, by public notification, specify the castes, communities or parts of, or groups within castes or communities which shall, for the purposes of this Constitution, be deemed to be ‘Backward Classes’ in relation to that State.
- (2) The Parliament may, by law, include in or exclude from the list of Backward Classes, specified in a notification, issued under clause (1) any caste or community or part of or group within any caste or community but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.’ ”

The Honourable Shri K. Santhanam (Madras: General): Sir, it is not an amendment, but only a reversion to the original article. Amendment No. 531 is not really an amendment, because it only seeks to retain the original article.

Mr. President : That is not exactly the case, there are some changes; though there is no change in the substance there is a slight change in the wording.

Well then, we come to amendment No. 605, and that is in the name of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : I do not wish to move it, Sir.

Mr. President : Article 379.

Shri T. T. Krishnamachari : Sir, we are accepting amendment No. 418 and so No. 564 need not be moved.

Dr. P. S. Deshmukh : Sir, as a last request I would submit that there is only one amendment I am rather keen on moving and that is No. 535 to article 379.

Mr. President: No, I do not think I can allow that amendment to be moved. It is altogether a new article and it involves a complete reversal of what is contained in those articles. I cannot allow that, I am sorry.

Then we come to article 388, and there is amendment No. 566. Mr. Krishnamachari?

Shri T. T. Krishnamachari: Yes, all those amendment Nos. 566 to 570 are moved.

‘That in clause (1) of article 388, for the words “the President of the Union”, in the two places where they occur, the words “the President of India” be substituted.’

‘That in the first proviso to clause (1) of article 388, for the words “mentioned in this article” the words “mentioned in this clause” be substituted.’

‘That in the first proviso to clause (1) of article 388, for the words “representing a State” the words “representing a Province or as the case may be, a State” be substituted.’

‘That in the second proviso to clause (1) of article 388, for the words “representing a State” the words “representing a Province or a State” be substituted.’

‘That in the second proviso to clause (1) of article 388, for the words “Legislative Assembly of that State” the words “Legislative Assembly of that Province or of the corresponding State or of that State, as the case may be,” be substituted.’

Mr. President : Article 388, amendment Nos. 611 and 621.

(Amendment No. 611 was not moved.)

Shri H. V. Kamath (C.P. and Berar: General): Sir, I would like to move amendment Nos. 621, 622 and 623.

Mr. President : Yes.

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

‘That with reference to amendment No. 568 of List IV, in the second proviso to clause (1) of article 388, the words and letter “Part A of” be deleted.’

‘That with reference to amendment No. 569 of List IV, in the second proviso to clause (1) of article 388, the words and letter “Part A of” be deleted.’

‘That with reference to amendment No. 570 of List IV, in the second proviso to clause (1) of article 388, for the words “The Legislative Assembly of that State” the words “the Legislative Assembly of that Province or of the Corresponding State or of that State, wherever such Assembly has been constituted” be substituted.’

These amendments, Sir, arise out of the proviso to clause (1) of article 388. That proviso refers to the filling of seats caused by vacancies on account of persons belonging to the Scheduled Caste, Muslim or Sikh community leaving the Assembly.

The difficulty that presents itself to me is this. Under the Cabinet Mission scheme the mode of election to the Constituent Assembly was through an electoral college, consisting of the Members of the provincial legislatures and there were separate electorates also consisting of the General, Sikh and Muslim communities. I could have understood if the reference in this proviso to clause (1) of article 388 was to the General, Sikh and Muslim communities, as adumbrated in the Cabinet Mission scheme under which this Assembly was elected. But, Sir, this proviso mentions the Scheduled Caste, Muslims, and Sikhs, but there is no reference to the general community. The Scheduled Castes have been brought in.

Therefore, I feel that we have, to some extent, set aside in this regard the scheme of the Cabinet Mission of 1946 under which this Assembly was constituted. I see no reason why the States specified in Part A of the First Schedule

alone should be mentioned here. If you turn to the First Schedule, you find there are three parts: Part A, Part B and Part C. The three units of Part C, namely Ajmer-Merwara, Coorg and Delhi were envisaged in the Cabinet Mission Scheme of 1946. So, whatever was applicable to the States in Part A of the First Schedule must be made applicable to these three States at least of Part C. But in view of this change of the language from General to Scheduled Castes, I think that this article 388 must be made applicable to all the States of the First Schedule, namely States in Part A, States in Part B and States in Part C. It is with this end in view that I have tabled the first two amendments (Nos. 621 and 622), that is, that whatever seat is rendered vacant on account of a member of the Scheduled Castes, or Sikh or Muslim community leaving the Assembly, must be filled, as far as practicable, by a member belonging to that community. This should not be confined only to the States of Part A of the First Schedule, because the States mentioned in Part B, many of them have got legislatures—at least a good number of them. Mysore has got a legislature functioning: Travancore-Cochin have a legislature functioning: Madhya Bharat also has a legislature, I believe. The provision applicable to the States in Part A should, therefore, be made applicable to these States as well.

My last amendment No. 623 also has a bearing on the subject matter I have just referred to. The amendment suggested by the Drafting Committee says that instead of the words “the Legislative Assembly of that State”, the words “Legislative Assembly of that province or the corresponding State or of that State as the case may be” be substituted. This is all right, because the Drafting Committee visualises the application of this article only to the States in Part A of the First Schedule. But my amendment goes further. It makes it more comprehensive; it makes it applicable to all the States in the First Schedule, that is States in Part A, Part B and Part C. We are all aware that in some of the States there is no Legislature functioning. My amendment suggests that wherever there is an Assembly or Legislature functioning in any of the States mentioned in Part A, B or C of the First Schedule, this article must be brought into operation, and not merely in the case of States mentioned in Part A of the First Schedule.

Sir, I move amendments 621, 622 and 623 and commend them to the House for its earnest consideration.

Mr. President : There is an amendment of the Drafting Committee (No. 574) to article 394.

Shri T. T. Krishnamachari : Sir, I move:

“That in article 394 after the figure ‘60’ the figure ‘324’ be inserted, and after the figure ‘388’ the figure ‘391’ be inserted.”

Shri Jaspal Roy Kapoor (United Provinces: General): May I have your permission to say a word about amendment No. 572? I would like to invite the attention of the Drafting Committee and ask them whether they have not considered it necessary to include 366 also in sub-clause (3) of article 392, because article 366 is also to be operative immediately after we pass this Constitution. Article 366 relates to definitions but under the same article the President is also expected to perform certain functions and therefore it must be made permissible for the Governor-General to perform those functions from the date of the commencement of this Constitution on the 26th January.

Mr. President : But article 366 deals with definitions.

Shri Jaspal Roy Kapoor : Under the proposed clause to article 392 it is suggested that the powers conferred on the President by this article, by article 324, by clause (3) of article 367 and by article 391, shall before the commencement of this Constitution be exercisable by the Governor-General of the Dominion

[Shri Jaspat Roy Kapoor]

of India. It does not refer to article 366. What I submit is that it is perhaps necessary that the powers exercisable by the President under article 366 may also be permitted to be exercised by the Governor-General of India under clause (3) of article 392.

Mr. President : There is no power to be exercised under 366—it deals only with definitions.

Shri Jaspat Roy Kapoor : There are powers there, Sir. May I refer you to clauses (12), (21), (22) and (30) thereof? These are the various clauses under which the President is expected to perform certain functions.

Shri T. T. Krishnamachari : Mr. President, Sir, under article 394, article 366 will come into operation the moment this Constitution is passed. But it is not necessary to vest the Governor-General with the powers of the President in regard to this particular article because, as you have yourself mentioned, there is no function for the Governor-General to exercise contemplated by this article in the mean time. The particular reference to clause (12) of this article no longer applies because clause (12) has been taken away from the interpretation clause and put separately. So far as clauses (21), (22) and (30) are concerned they are powers which will not be exercisable by the Governor-General and there will be no occasion for him to exercise these powers in the interim period until the new Constitution comes into being when the President will take over. I do not think there is any point in the suggestion made by my honourable Friend though I am very grateful to him for pointing out this matter.

The Honourable Shri K. Santhanam : Sir, in amendment No. 572, article 324 is included but it is not brought in to operation by article 394. So there is a mistake here.

Mr. President : There is amendment No. 574 which covers the point you have raised.

Then amendments to the First Schedule.

Shri T. T. Krishnamachari : Sir, I move:

“That in Part A of the First Schedule under the sub-heading ‘Territories of States’, the paragraph commencing with the words ‘The territory of the State of Bombay.....’ and ending with the words and figure ‘Extra-Provincial Jurisdiction Act, 1947 be omitted.”

Mr. President : There is amendment No. 613 of Mr. Sidhwa to one of these amendments.

Shri R. K. Sidhwa : My amendment is:

“That amendment No. 575 be deleted.”

As we see from the First Schedule there are territories of States mentioned. The first clause refers to State of Assam that is retained. The State of Bengal is retained. But the third clause containing reference to the State of Bombay is going to be omitted. Provision is made regarding other States also. I fail to understand why Bombay has been particularly mentioned in this amendment to be deleted. Nothing is being substituted in its place and I am rather perplexed as to what is the idea in not mentioning the territory of the State of Bombay. I therefore thought that it should not be deleted unless there is specific reason and some provision for a substitution is made. I have already moved my amendment but I would like to understand from the Drafting Committee as to what is their object in seeking to delete this clause. I cannot give my comments on it before I know what is the object in its deletion. I can only state that it should be retained.

Shri K. M. Munshi (Bombay: General): Mr. President, Sir, Mr. Sidhwa referred to amendment No. 575. The reason for the deletion is this, that it is no longer necessary because appropriate orders have been passed by the Government of India whereby parts of Sirohi will be covered by the subsequent portion of the Schedule. It will be included in the four lines on top of page 182.

“The territory of each of the other States *in this Part* shall comprise the territories which immediately before the commencement of this Constitution were comprised in the corresponding and the territories which, by virtue of an order made under section 290A of the Government of India Act, 1935, were immediately before such commencement being administered as if they formed part of that Province”.

A part of Sirohi will fall under this part of the Schedule and another part of it will fall under the last paragraph on page 183. So it is no longer necessary to have the last lines of this paragraph.

Shri Jainarain Vyas (United State of Rajasthan): On a point of information, Sir. Has a Covenant been signed by the Ruler of Sirohi or by anybody to divide Sirohi into two parts and to merge one part with Bombay and the other with Rajasthan ?

Shri K. M. Munshi : I do not think that question is appropriate here. I am only explaining the constitutional position and why we have omitted this. Any question as to what has been done should be addressed to the proper quarters.

Shri Jainarain Vyas : Constitutionally it is not in order to divide a State into two parts, unless the people desire to have it. I object to it.

Shri K. M. Munshi : As I said it is a matter of the policy of the Government of India and the honourable Member should address himself to the Honourable the Deputy Prime Minister or the proper authority. It is not for me to explain the matter here.

Shri R. K. Sidhwa : My Friend Mr. Munshi quoted from pages 181 and 182 of the Constitution but he was not very explicit in what he said and I could not understand him.

Mr. President : The State now falls under one or other of the two categories mentioned in the para. Part of the State falls under the first category and the other part falls under the second category.

Shri R. K. Sidhwa : The new territories of Assam and Bengal are mentioned but Punjab is also a new territory, which has been created by Partition and it should have been there. Otherwise only the last clause should remain.

Mr. President : The question which Mr. Sidhwa has raised is why Bengal is mentioned and not Punjab, as both have been created on account of partition. I understand that Punjab as it stands now comprises some portions of the States and therefore it will come under this last para; whereas in the case of Bengal no State has been incorporated with Bengal and therefore Bengal is mentioned specially.

Shri Jainarain Vyas : Sir, I understand that some orders have been passed regarding Sirohi. Whatever the orders are, I do not want to bother myself with them. But in Schedule I, I want to point out that there are three parts. Part I includes those areas which are called provinces, part II incorporates those areas which are centrally governed and part III incorporates those areas which are now Unions or States. I do not find the name of Sirohi in all these three parts. Now the mere statement that such and such a thing has happened behind a curtain cannot solve the question. Sirohi is no-man's land today. It is not in India according to the Constitution which has been placed before us. It is neither in part I, nor II nor III. Had you retained the words ending with

[Shri Jainarain Vyas]

“Extra-Provincial Jurisdiction Act, 1947,” Sirohi would have been incorporated in Bombay. But by taking out those words you have taken out Sirohi from Bombay, but you have not put it in either part I, or II or III. So a lacuna has been left in the constitution, and I hope Mr. Munshi or some member of the Drafting Committee would please explain the point, so that I may proceed further.

Mr. President : As far as I understand, Sirohi is not mentioned anywhere and there are so many other States also which are not mentioned anywhere, because they have become integrated with some province or other. Those States which have become integrated with provinces now form part of those provinces. Those which have not become integrated are mentioned separately in Part B. Part of Sirohi has become incorporated in Bombay and part in another province and it is not necessary now to mention it anywhere. Therefore, the last portion of the third para does not now apply. It is not now being governed by the Extra-Provincial Jurisdiction Act. That is as I understand the position.

Shri Jainarain Vyas : I understand what you say, Sir, but I am not very much satisfied with the position.

Mr. President : That is a different matter.

Shri Jainarain Vyas : Now Sir, Sirohi has been divided. Rajasthan as it stands does not incorporate Sirohi. I know it. To divide Sirohi without the consent of the people is doing injustice to the people of Sirohi and Rajasthan and perhaps to justice itself. I raise a mild or strong protest against the action of the government behind the curtain in interfering with the Constitution at a time when the Constitution of India is in the making and when the ruler of Sirohi is not in a position to make his say and when the people of Sirohi have already protested against their being incorporated in Bombay. If Shri Gokulbhai who represents Bombay and who once represented Sirohi is satisfied with the position then I will have no objection.

Kanwar Jaswant Singh (United State of Rajasthan): Sir, in regard to Sirohi a very serious situation has arisen, so far as Rajasthan is concerned. In regard to other Indian States the position is that their Rulers have agreed in a Covenant to incorporate their States either in Provinces or State Unions. So far as Sirohi is concerned the Ruler is an infant and therefore no Covenant has been entered into with that State and as such it cannot be divided or incorporated either with a States Union or a Province. Therefore in this way to divide the State of Sirohi without a proper procedure or any Covenant is most irregular and great injustice is being done to Rajasthan.

Shri Gokulbhai Daulatram Bhatt (Bombay States): *[Mr President, The question of Sirohi has no doubt, been rather difficult of solution. What I know about this question is this that about a year ago the President of the Regency Council, the Rajmata of Sirohi handed over the administration of the State to the Central Government. She had also requested the Central Government in writing to carry on in its discretion the administration of the State. Since then the administration of the State is being carried as by the Government of Bombay on behalf of the Central Government. Now the question has come up as to the future of Sirohi. It was decided here that some portion of Sirohi should go to Bombay and some to Rajasthan. I was not present here when this decision was taken. It has not yet been finally decided as to what part should go to Bombay and what part to Rajasthan. Nothing has been decided about Mount Abu also. So far as I know no final decision has been taken with regard to these matters.

*[] Translation of Hindustani speech.

But I know that proper decision will be taken in regard to this matter by Sardar Patel and others in consultation.

Mr. President : What Mr. Gokulbhai is saying has already been said by Mr. Munshi that orders have been already issued and until such notifications it would remain as it is. That (previous) orders will cease to have any effect after the other notification is available to cancel it.

Shri Gokulbhai Daulatram Bhatt : One thing, however, has now become clear with regard to this matter. During the last sitting there was a doubt in our minds that the whole of the Sirohi State would go to Bombay. Now it has become clear that only a portion and not the whole of Sirohi would go to Bombay and that a major portion of it is going to be merged with Rajasthan. As I am not aware of all the facts, I cannot say anything more. We the people of Sirohi have thought it in this way that whatever decision is taken by Sardar Patel will be taken with due consideration to the view point of the people of Sirohi and Rajasthan, and that shall be acceptable to us.

Shri Raj Bahadur (United State of Matsya): May I speak a few words, Sir ?

Mr. President : But honourable Members must remember that we have to close the discussion at half past eleven.

Shri Raj Bahadur : Sir, I take this opportunity simply to express myself on this point which has been for a long time agitating the minds of the people of Rajasthan. Ever since Sirohi was taken under the administration of Bombay as a Centrally administered area, the Provincial Congress Committee and the other Congress committees in Rajputana have been passing resolutions that it should not be taken away from Rajasthan and should be placed under the administration of Rajasthan Government. Yesterday it was in the air that Sirohi has been vivisected, part of it going to Rajasthan and part of it to Bombay. As a matter of fact the people's desire in this case has been that the hill station of Mount Abu is not in any case taken away from them. Mount Abu is the most beautiful spot and the only hill station in that area, which fascinates the attention and attraction of all the people living there. This has been the only health resort and sanatorium for the people of Rajasthan, who want to go to one. Mount Abu therefore happens to be the apple of discord in this case. It is, therefore, a painful surprise for those who live in Rajasthan that it has been taken away from them. It is, however, not yet clear whether Mount Abu remains with Rajasthan or forms part of Bombay. It would have been much better that if any part of Sirohi were to be partitioned off then this House should have been informed about it in good time and the people told what part goes to Rajasthan and what part to Bombay. At present everything is almost in the dark. We are all in the dark about it and it is really surprising that without even taking the people into confidence and without even consulting the local congress committee this division has been gone through. It is claimed that this Constitution would bear the stamp of the free will and consent of the people of India and of its component parts. I do not think it will be in consonance with this principle that we have accepted if Sirohi is divided into parts without even ascertaining the wishes of the people. We have the utmost respect and admiration for our leader Sardar Vallabhbhai Patel. I implore him that in this case he may kindly note our feelings. If any orders have been passed already wish that such orders are reconsidered and revised before this constitution is finalised. The State of Sirohi including Mount Abu should go to the province to which it rightly belongs, and to the people who have made of Mount Abu what it is today.

Mr. President : I do not think any further discussion is necessary. I will ask Mr. Munshi to let the House know the notification under which Sirohi has been divided so that the misgivings of the Members may be removed.

Shri K. M. Munshi : There is no such notification.

Mr. President : If there is no Such notification. how call you take notice of it in the Constitution ? I understood from you that there was a notification.

The Honourable Sardar Vallabhbhai J. Patel (Bombay: General): Mr. Munshi will not be able to explain it. I shall explain it.

Some people of Rajasthan who have come here on behalf of the Congress consider this Mount Abu to be a beautiful spot and therefore say that Rajasthan has a claim on it. There are many beautiful spots in India and that is no justification for claiming Mount Abu. The Rajasthan Congress Committee was told from the very beginning that Sirohi is a part of Gujarat and will go with Bombay. The Congress committee took cudgels with the Ministry and started this cry. Before that, when the annual session of the Congress was held in Rajasthan, Shri Gokulbhai Bhatt, who was the Chief Minister of Sirohi, was also the President of the Rajasthan Congress Committee. Shri Gokulbhai also comes from Gujerat. I asked them whether they wanted Gokulbhai because he was President of the Rajasthan Congress Committee or whether they wanted Sirohi. Really what they wanted was that Gokulbhai, who was elected to the Reception Committee as its Chairman, should continue as the President of the Rajasthan Congress Committee as well. It was difficult for them to keep him there unless Sirohi was in it while our decision was that Sirohi should go to Bombay. Therefore, to accommodate them, we said we would take Sirohi to the Centre for the present but it was to be administered by the Bombay Government. Thus it eventually went to the Bombay Government. There are people in one or two portions of Rajasthan still who want to go to Bombay such is Dungarpur, etc. They are Gujrati people. When this decision was taken after tile Congress session was over, the Congress came into Conflict with the Ministry there and as a consequence with the States Ministry also. The Rajasthan representatives who have come here on behalf of the Congress have started this cry that Sirohi should go into Rajasthan. They have removed Shri Gokulbhai Bhatt from the President ship of the Congress and have also passed a vote of no-confidence against the Ministry.

Shri Jainarain Vyas : More resolutions to place Sirohi in Rajasthan were passed during Shri Gokulbhai's Presidentship than afterwards.

The Honourable Sardar Vallabhbhai J. Patel : I do not want to be interrupted. I want to explain what the position is.

Therefore eventually, in order to accommodate them we sent a special officer to make enquiries. His report was to the effect that a certain portion of Sirohi Should go to Bombay inasmuch as a large majority of the people there asked for it. Sirohi people are divided among themselves except tile portion that has to be separated.

Now, if the Rajasthan people want that a portion of Sirohi including the City Should be given to them we are willing to accommodate them. But if they claim the whole of Sirohi, it is impossible to accommodate them.

Then the question is whether they want a division or not. If they do not want a division, then the whole of Sirohi will go to the Bombay province. If they want a division, then a portion of it would go to the Bombay province. A map has been prepared and orders are to be passed before the Constitution comes into force. The map can be shown to them, they can come and see it in tile office even now. The gentleman who spoke just now is not from Sirohi. He comes from Bharatpur. He says Abu is a delightful place. Bharatpur is all equally delightful place. Therefore it cannot be claimed by somebody else. It may be that they may not like it, but the fact is that orders have already been passed. They have only been kept over because of the decision of these people.

We want still to accommodate them if they can agree to reason. If they do not, then the whole of Sirohi will go, but whatever orders are to be passed will be passed before the Constitution comes into force. But Sirohi by itself as a separate entity will not remain. Either the whole of it will go to Bombay or one portion will go to Rajasthan and one portion will go to Bombay. That is the position. If Sirohi is to be split up, it has to be split up with their consent. Then that will go into two parts. If they do not want separation, then the whole of it will go to Bombay.

Mr. President : I am not concerned at the present moment, Sardar, with the merits of the question whether Sirohi....

The Honourable Sardar Vallabhbhai J. Patel : But the merits were discussed.

Mr. President : But only with orders.

The Honourable Sardar Vallabhbhai J. Patel : But the division orders are there already.

Mr. President : I am not concerned with the merits but I am concerned only with orders. Orders have been passed, so that the amendment which is now proposed represents a state of fact which has been accepted by the States Ministry.

The Honourable Sardar Vallabhbhai J. Patel : Yes.

Mr. President : If that is so, then the amendment can come in, but if it is to come into force in the future, the amendment cannot come in.

The Honourable Sardar Vallabhbhai J. Patel : The orders are there but the orders could be modified before the Constitution comes into force if they want.

Mr. President : In that case, we cannot take it in the form of an amendment, If we take the order as the final order, then it can come in in the form it has come. Otherwise, if the order is not there, we cannot take it. So, I take it from you that the orders have already been passed.....

The Honourable Sardar Vallabhbhai J. Patel : Yes.

Mr. President : And Sirohi has been divided into two parts, one part going to Bombay and one part to Rajasthan.

The Honourable Sardar Vallabhbhai J. Patel : It is only to accommodate these people it is not published. The order is there.

Shri Mahavir Tyagi (United Provinces: General). The arguments advanced by our honourable Friend Sardar Vallabhabhai Patel are in my humble opinion not very weighty. That Sirohi.....

Mr. President : That is a different matter. I am afraid we are not concerned here with the merits of the question.

Shri Mahavir Tyagi : May I know what language the Sirohi people speak?

Mr. President : That I do not know but there are so many States which have been merged in some provinces or the other and in those cases we have accepted the fact of the merger and we have incorporated it in the Constitution. If Sirohi stands on the same footing as the other States, *i.e.*, if Sirohi has been merged with some State or other, then we can accept this amendment. As I understood from Sardar Patel, orders have been passed Sirohi into two parts, one part going to Bombay and the other going to Rajasthan. Then we accept the amendment. Otherwise not. We are not concerned in this House with the merits of the case, whether it has been rightly done or wrongly done.

Kanwar Jaswant Singh : The Deputy Prime Minister only said that orders are on the file. So long as orders are not issued, they cannot take effect.

[Kanwar Jaswant Singh]

Therefore, in my opinion, this question cannot be taken up till the Constituent Assembly at this stage. The question of Sirohi has to be deferred to a future date, by when wish of the people of Rajasthan should be obtained.

Mr. President : They have been passed, as I understood from Sardar Patel. Then we pass on to the other amendments.

Shri T. T. Krishnamachari : Sir, I move:

“That in Part B of the First Schedule, for the paragraph under the sub-heading ‘Territories of States’, the following paragraph be substituted:—

The territory of each of the States in this Part shall comprise the territory which immediately before the commencement of this Constitution was comprised in the corresponding Indian State, and—

- (a) in the case of each of the States of Rajasthan and Saurashtra, shall also comprise the territories which immediately before such commencement were being administered by the Government of the corresponding State, whether under the provisions of the Extra-Provincial Jurisdiction Act, 1947, or otherwise; and
- (b) in the case of the State of Madhya Bharat, shall also comprise the territory which immediately before such commencement was comprised in the Chief Commissioner’s Province of Panth Piploda.’

“That in Part C of the First Schedule, for the first two paragraphs under the sub-heading ‘Territories of States’ the following paragraph be substituted:—

‘The territory of each of the States of Ajmer, Coorg and Delhi shall comprise the territory which immediately before the commencement of this Constitution was comprised in the Chief Commissioner’s Province of Ajmer-Merwara, Coorg and Delhi, respectively.’ ”

“That in List of the Seventh Schedule, for entry 8, of the following entry be substituted:—

“8. Central Bureau of Intelligence and Investigation.”

Mr. President : Amendment No. 542. I do not think I can take that. It is too late.

Shri T. T. Krishnamachari : Sir, I move:

‘Sixth Schedule

“That clause (g) of sub-paragraph (1) of paragraph 3 be omitted, and the remaining clauses ‘(b), (i), (j) and (k)’ be relettered as (g), (h), (i) and (j)’ respectively.”

“That to paragraph 4, the following sub-paragraph be added:—

“(4) The Regional Council or the District Council, as the case may be, may with the previous approval of the Governor make rules regulating—

- (a) the constitution of village councils and courts and the powers to be exercised by them under this paragraph;
- (b) the procedure to be followed by village councils or courts in the trial of suits and cases under sub-paragraph (1) of this paragraph;
- (c) the procedure to be followed by the District or Regional Council or courts constituted by such Council in appeals and other proceedings under sub-paragraph (2) of this paragraph;
- (d) the enforcement of decisions and orders of such councils and courts;
- (e) all other ancillary matters for the carrying out of the provisions of subparagraphs (1) and (2) of this paragraph.’ ”

“That in sub-paragraph (3) of paragraph (5), for the words ‘and the Governor may by rules prescribe the procedure to be followed at such trial’ the words and figure ‘to which the provisions of this paragraph or paragraph 4 apply’ be substituted.”

“That in the proviso to sub-paragraph (2) of paragraph 20, for the words, brackets and letters ‘clauses (c), (f) and (g)’ the words, brackets and letters ‘clauses (e) and (f)’ be substituted.’ ”

Mr. President : This completes list VI. Then there are three amendments in List VIII.

Shri T. T. Krishnamachari : Sir, I move:

“That in article 106, for the words ‘Constituent Assembly of India’ the words ‘Constituent Assembly of the Dominion of India’ be substituted.”

“That in clause (3) of article 348, for the words ‘shall for the purposes of the said clause be deemed to be the authoritative text thereof’ the words ‘shall be deemed to be the authoritative text thereof in the English language under this article,’ be substituted.”

Mr. President : I take amendments.* Nos. 615 and 616 as moved. No. 630 by Mr. Chaliha.

Shri Kuladhar Chaliha (Assam: General): Mr. President, Sir, I move:

“That in amendment No. 621 of List VI, for the first three lines of the proposed sub-paragraph (4) of the Sixth Schedule, the following be substituted:—

‘(4) That the Governor shall make rules regulating—’ ”

My whole object is that in primitive societies for which these Schedules have been prepared, we should be a little more careful in granting powers to make rules to these Regional and District Councils. In some places like the Khasi Hills we have got educated people but in places like the Naga Hills, the people are not literate. In these areas there is not even a single man who can read or write. The British rule when they were here was autocratic. Somehow or other before they departed, they have given these people the idea that they are a very democratic people, that they can frame their rules. They have given them all these nice ideas before they left, and we have been caught in the trap, and we think that they are very democratic, they are autonomous, that they can frame their rules, etc., but it is not so. The Drafting Committee says that they shall frame rules with the previous approval of the Governor. Why this? Why cannot the Governor make the rules? These people are not capable of doing that. They do not know how to do it. As such I have always thought that in this Sixth Schedule the Governor should have more and more powers. We have given power to the Regional Council or the District Council to make rules with the approval of the Governor. Instead of that why not allow the Governor to make the rules so that it may be easy for simple people there to follow what has been laid down by the Governor? Instead of sending the rules, we find they are to frame the rules and have the Governor’s approval. First of all, the Governor will be in a delicate position and once the rules are framed, he is bound by those rules to a certain extent but if you leave it to the Governor, he has his legal advisers, political advisers and he will have the advantage of their advice. So that he will frame the rules better. My humble amendment is to allow the Governor to make the rules and nothing else and to eliminate the trouble of the primitive people from framing rules for these very cumbersome and complex things and as such I should like to request the Drafting Committee to accept the amendment and simplify the whole thing. This is the whole object of the amendment, Sir.

We start with a very wrong background that the primitive people are very democratic but if we read anthropological or sociological books, we find that there is nothing like democracy in a primitive society except in a few places such as Hawai and South America and excepting those parts nowhere in the world there is any democratic society among the primitive tribes, and as such my submission is that we should not burden them with framing the rules, and we must allow the Governor to make the rules for them, and I commend this amendment for the acceptance of the House.

*615. That in entry 75 of List I of the Seventh I Schedule, after the words “Emoluments. allowances,” the word “privileges”, be inserted.

616. That in entry 46 of List III of the Seventh Schedule, for the words “other than the Supreme Court” the words “except the Supreme Court” be substituted.

The Honourable Rev. J. J. M. Nichols Roy (Assam: General) : Sir, I support the amendment made by the Drafting Committee. I oppose the amendment made by Mr. Chaliha. I have not seen the amendment of Mr. Chaliha. Is it printed?

Mr. President : The amendment only says that in place of the Regional or District Council as the case may be we give the power to the Governor to make the rules.

The Honourable Rev. J. J. M. Nichols Roy : Mr. Chaliha has stated that in those areas which will be governed by the District Councils there are no people who will run this administration or will be able to make rules. I think he is mistaken altogether because these District Councils are only with six hill districts. The position of these hill districts is quite different from the other tribal areas which are outside the District Council. These District Councils will be run by the people who are intelligent there. They are enough intelligent people in these areas who will run these administrations and will also be able to make rules. The North Cachar Hills and Mikir Hills which are not well-advanced will be supervised by District Officers who will be the Chairmen of the District Councils, but in the other areas we can find people who will carry on the administration. Therefore, I oppose the amendment moved by Mr. Chaliha and I support the amendment moved by the Drafting Committee.

Shri Brajeshwar Prasad (Bihar: General): Sir, I would like to add one word . . .

Mr. President : I do not think we need have any more discussion on this point. Both the points of view have been placed and we are hard pressed for time. Now there are three amendments left to be moved or otherwise disposed of.

Shri H. V. Kamath : Has 616 been disposed of, Sir?

Mr. President : I have taken both as moved because they are all amendments.

Shri H. V. Kamath : I had an amendment to that. I gave notice of it this morning. I do not want to say much, but only....

Mr. President : Which is your amendment?

Shri H. V. Kamath : I handed it in this morning, Sir.

Mr. President : I will take that as moved. As I was saying there are three sets of amendments which somehow or other will have to be disposed of. One set of amendments relate to the name of Bengal. I have taken List VII also and I have taken them as moved.

Shri H. V. Kamath : With reference to amendment 628, may I ask why the Drafting Committee has fallen in love with the word "Dominion" and go on repeating it *ad nauseam*?

Mr. President : Anyhow you may throw it out if you like. There are three amendments which are connected and which come to this that the name of Bengal as in the Drafting Constitution should be 'West Bengal. That is one amendment. Then there is the second amendment, which I mentioned yesterday, of Prof. Shibban Lal Saksena relating to article 348 clause (3). Do you wish to move that?

Prof. Shibban Lal Saksena (United Provinces: General): I have already moved it.

Mr. President : I will take that as moved.

Shri T. T. Krishnamachari : It is covered by 629, Sir.

Mr. President : It is covered. Very well. Then it need not be moved. Then there was an amendment by Shri A. V. Thakkar. What is the position of the Drafting Committee with regard to that?

Shri P. T. Chacko (United State of Travancore and Cochin): I rise to a point of order if the amendment is allowed to be moved. This is almost a surprise on us who represent the States which are mentioned therein Moreover the mover is introducing a substantial matter neither necessary nor consequential

Mr. President : He is seeking to move only with regard to Madhya Bharat and so you are not touched.

Shri P. T. Chacko : Then I do not press my point.

Shri A. V. Thakkar (Saurashtra): At the time when the provinces were named, the tribal of which will have the benefit of a special Minister to be in charge of that portfolio, *i.e.* in the year 1947 the States were not in the picture at all. They have been admitted in the Union afterwards; they have been assimilated or they have been joined on in the various sections of Schedule 1; and among those States which had a large number of tribal these are the four Unions-Madhya Bharat, Rajasthan, Travancore-Cochin and Vindhya Pradesh but the States Ministry agrees that it should be adopted for Madhya Bharat only as a covenant has already been contracted with them and they have accepted that. So I propose that the State of Madhya Bharat should be added to article 164, Sir.

Mr. President : There is another amendment; Mr. Krishnamachari.

Shri T. T. Krishnamachari : Sir, I move:

“That in Part XVI of the Constitution, for the word minorities wherever it occurs, the words certain classes’ be substituted.”

Sir, objection has been taken by several honourable Members to the use of the word ‘minorities’ even in the heading of this Part and also the consequential use of this word elsewhere. It has therefore been decided to drop this word and to suggest the use of the word “certain classes” in the place of ‘minorities.’

I have also another amendment to suggest.

“That in entry 67 of List I of the Seventh Schedule, after the word ‘record’ the words ‘and archaeological sites and remains’ be inserted.”

This finds mention in the Concurrent List. But so far as the Centre is empowered to declare any archaeological sites and remains and ancient monuments by law to be vested in the Centre, this is an omission which is now sought to be rectified. Therefore, I trust that you will give permission for this amendment to be moved and the House will accept that.

Mr. President, Sir, I would like to apologise to you and to the House for venturing to make this amendment at this late hour. I would like to draw the attention of the honourable Members to amendment No. 562A in regard to article 367 which was moved yesterday. The first part of this amendment relating to sub-clause (3) of article 367 reads thus.

“For the purposes of this Constitution ‘foreign State’ means any country which is outside the territorial jurisdiction of the Union.”

Certain honourable Members at that time, particularly, my honourable Friend Mr. Santhanam, pointed out that the wording was not very happy. The matter has been further examined and our legal adviser suggests that the words “which is outside the territorial jurisdiction of the Union” may be omitted and the following words substituted: “other than India.” The operative part of the clause will read like this, if the amendment is accepted:

“(3) For the purposes of this Constitution, ‘foreign State means any State other the India.”

[Shri T. T. Krishnamachari]

In the proviso also, the objection of my honourable Friend Mr. Santhanam has been accepted and the word 'country' will be changed into 'State' in the two places. For the benefit of the honourable Members, I shall read the clause as amended.

Dr. Bakhshi Tek Chand (East Punjab: General): These amendments have not been circulated; we are not also able to hear the honourable Members.

Shri. T. T. Krishnamachari : This is merely a verbal change. I will read it again:

“(3) For the purposes of this Constitution, ‘foreign State’ means any State other than India:

Provided that, subject to the provisions of any law made by parliament, the President may by order declare any State not to be a foreign State for such purposes as may be specified in the order.:

There is another matter which needs to be mentioned, Sir. In amendment No. 463 to article 168, a consequential change will have to be made because an amendment has been moved to change the name of Bengal to West Bengal. That amendment would be made subject to the approval of the House.

Mr. President : You have moved the amendment to entry No. 67?

Shri T. T. Krishnamachari : Yes, I have moved.

Shri H. V. Kamath : Sir, I have an amendment relating to the re-arrangement of several Chapters of the Constitution, amendment No. 430 in List I. That may be taken as moved; I do not want to take the time of the House.

Mr. President : I think this will involve a re-arrangement of the whole thing.

Shri H. V. Kamath : Numbering only, Sir.

Mr. President : Not only numbering, but a re-arrangement.

Shri H. V. Kamath : You may take it as moved or rule it out of order. I would request you, Sir, to be so good as to permit me to formally move two amendments 207 and 197 of List I. One refers to the name of the Upper Chamber of the Central Parliament: to substitute the name “Chamber of States” instead of “Council of States”. I shall only formally move them.

Mr. President : That does not arise out of any amendment

Shri H. V. Kamath : I want your special permission, Sir.

Mr. President : No I will not permit this as also 430.

Shri H. V. Kamath : Amendment 197, Sir, regarding joint and several responsibility of Ministers and not merely collective responsibility.

Mr. President : That also does not arise out of any of the amendments. I will not allow any of these.

Shri Jaspat Roy Kapoor : Mr. President, one important amendment remains yet undecided in the sense that it seems that the Members are not agreed with regard to the name that may be given to the United Provinces. In that view, may I have your permission to move formally an amendment to the following effect, so that there may be no difficulty in taking a decision with regard to the name of the United Provinces and possibly Bengal also, because Bengal Members also want a change in the name of their province before the 26th of January. If I have your permission, Sir, I may move like this:

“That a new article be inserted :

‘Notwithstanding any thing in article 3, the Constituent Assembly of India, before the commencement of this Constitution, may by resolution alter the name of any State.’ ”

I understand, Sir, honourable Members are anxious that no name of a State may be changed except with their consent and therefore I am specifying in this amendment that any change in name may be done by a resolution of the Constituent Assembly before this Constitution comes into force. I understand we are not only meeting up to the 26th of November, but we shall have to meet some time in January also for the election of the President and perhaps for some other business also. If between now and then an agreement is arrived at between the Members with regard to this subject, by a resolution which may be accepted by the House, the name may be changed. Otherwise, the name can only be changed by the cumbersome process mentioned in article 3. If I have your permission, it may be taken as moved.

There is one little amendment which will also have to be made in article 394 to the effect that after the figure 392, the figure 392-A be inserted which would mean that the amendment which I have just mentioned may also be enforced from the very day on which this Constitution is passed.

Shri Prabhu Dayal Himatsingka : (West Bengal: General): Article 391 covers the point raised by my friend. If there is agreement, the President merely passes an order and that can be done before the commencement.

Shri Jaspal Roy Kapoor : I have consulted legal experts on this question and they advise that under 391 it could not be done. If it could be done, then there is no need for my amendment, but I am advised that 391 relates to amendment of the Government of India Act which of course is a cumbersome process.

Mr. President : If Your amendment is accepted it will mean that the Constitution as it will be adopted here at the Third Reading stage may be amended so far as name is concerned simply by a resolution of this House.

The Honourable Shri K. Santhanam : It will involve a session after the Third Reading. I do not think it should be allowed.

Shri Mohan Lal Gautam (United Provinces : General) : The real question before the House is that the name of the United Provinces is to be changed and we have not yet been able to come to a decision and we want that the name should be changed before the commencement of the Constitution, *i.e.*, before the 26th January. That is the issue before the House. My suggestion is that, instead of asking the Assembly again to meet and pass a resolution to change the name which is a cumbersome process and, therefore, in my opinion, not advisable, on the recommendation of the Provincial Government the President may be given the power to change the name of the United Provinces. This is a very simple question. The name could have been changed even long ago. If the Provincial Government had changed its name by now, it would have been a settled fact and nobody might have raised any objection to it but now that it has come before us and now that U.P. is still the name of the province the question is being discussed by us. Therefore, my submission is that on the recommendation of the province, *i.e.*, the provincial Government, the President may accept it and the House may not be required to go through the whole process and may not be required to meet for this purpose. If it is accepted, then the Drafting Committee may propose suitable amendment to that effect.

Pandit Thakur Das Bhargava : I think there is ample time before the Third Reading is passed—between now and the end of the Third Reading the question may be decided.

Mr. President : Pandit Bhargava has suggested that there is still time between now and the 25th for the Members to come to an agreement on this question. If it is agreed to by them, that can be done.

The Honourable Dr. B. R. Ambedkar (Bombay : General) I think the difficulty could be easily got over if this Assembly before it closes its session on the 26th November could pass an act amending the Government of India Act 1935, section 290, permitting the Governor-General among other things which he is empowered to do to change also the name of a Province so that the President can act under article 391 and amend the schedule in order to carry out the action that has been taken by the Governor-General under the Government of India Act, as proposed. This matter cannot take more than a few minutes. It would be possible for the Drafting, Committee or the Home Department to bring before this Assembly a Bill to amend the Government of India Act 1935, section 290. Such a Bill could be passed before the 26th January.

The Honourable Shri K. Santhanam : Our difficulty is not objection to changing the name but only to 'Aryavarta', Similarly we cannot allow the Governor-General also to change the name to 'Aryavarta'.

The Honourable Dr. B. R. Ambedkar : It cannot be Aryavarta as the party has given its verdict on that. I am sure Babu Purushotam Das Tandon has taken note of that.

The Honourable Pandit Govind Ballabh Pant (United Provinces : General) What you have rejected will not be put forward by the U.P. Government nor accepted by the Governor-General. That we all accept.

Mr. President : Then nothing has to be done at present.

The Honourable Pandit Govind Ballabh Pant : On the understanding that an amending Bill of the nature suggested by Dr. Ambedkar will be passed before we disperse.

Mr. President : That is for Dr. Ambedkar to do.

Shri A. Thanu Pillai (United State of Travancore and Cochin) : It is for this House to decide. The people of the Province may like to call it 'Bharata Hriday'. We will not accept that. It is a matter of importance for the whole of India as to what parts of it are called by what names.

Mr. President : You may oppose the amending Bill when it comes up. Nothing has to be done at this stage.

Shri Mahavir Tyagi : There is yet, I am afraid, a very serious lacuna left. Article 394 says that articles 5, 6, 7 etc. will come into force at once. Among these, article 379 is also included, which pertains to such members as are also Members of the Provincial Assemblies and therein it is mentioned that their membership here will cease on the commencement of this Constitution. Now, if in accordance with Article 394, immediate effect is to be given to article 379, the double membership will cease at once. But the article sought to be given effect to immediately lays down that the double membership would cease at the commencement of this Constitution which means on January 26th, 1950. The wordings are : "from the commencement of this Constitution the seat of such member in the Constituent Assembly shall, unless he has ceased to be a member of that Assembly earlier, become vacant and every such vacancy shall be deemed to be a casual vacancy". Both the articles stand parallel to each other without being related to each other by the word "notwithstanding" and they are contradictory to each other in meaning. I want to know whether the membership ceases immediately or on the 26th January.

Mr. President : I do not think that interpretation can be given to it. Membership does not cease before the 26th January.

Shri B. Das (Orissa : General) : I would like to know, Sir, if amendment No. 618 of the Drafting Committee has been moved.

Mr. President : Yes, it has been moved.

Now, we have finished all the amendments, and there is no time for any further general discussion. But as a matter of fact, we have discussed everything which came up and which required discussion. So I would request Dr. Ambedkar to reply to the debate on the various amendments.

Shri Raj Bahadur : Sir, I want to refer to only one point. May I request that the order about Sirohi be placed before the House so that we may know what its contents are, and whether this Assembly can ratify or endorse it, or in any way take note of it or not.

Mr. President : I do not think that is a matter which comes before this House. It is a matter for the other House, not for this House, Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, in my reply I propose to take certain article which have been subjected to stronger criticism by the Members of the Assembly. It is, of course, impossible for me to touch upon every article to which reference has been made by the Members in the course of their observations. I therefore, propose to confine myself to the more important ones against which serious objections were raised.

I begin with article 22. Listening to the debate, I found that this article 22 and its provisions as amended by the Drafting Committee's amendments, have not been completely understood, and I should therefore like to state in some precise manner exactly what the article as amended by the Drafting Committee's amendments proposes to do. The provisions of article 22, as amended by the Drafting Committee, contain the following important points.

First, every case of preventive detention must be authorised by law. It cannot be at the will of the executive.

Secondly, every case of preventive detention for a period longer than three months must be placed before a judicial board, unless it is one of those cases in which Parliament, acting under clause (7), sub-clause (a) has, by law, prescribed that it need not be placed before a judicial board for authority to detain beyond three months.

Thirdly, in every case, whether it is a case which is required to be placed before the judicial board or not, Parliament shall prescribe the maximum period of detention so that no person who is detained under any law relating to preventive detention can be detained indefinitely. There shall always be a maximum period of detention which Parliament is required to prescribe by law.

Fourthly, in cases which are required by article 22 to go before the Judicial Board, the procedure to be followed by the Board shall be laid down by Parliament. I would like Members to consider the provisions of this new article 22 as amended by the Drafting Committee, with the original article 15A. It will be seen that the original article 15A was open to two criticisms. One was that (4) (a) did not appear to be subject to maximum period of detention prescribed under clause (7). Clause (4) (a) appeared to stand by

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itself, independent of clause (7). The second defect was that the requirements as to the communications of the grounds of detention did not apply to persons detained under (4) (a). It will now be seen that the present (4) of article 22 removes these two defects as they existed in the original draft of 15A.

Notwithstanding the improvement made by article 22, I find from the observations of Mrs. Purnima Banerji that she has still some complaint against the article. In the course of a speech yesterday, she said that preventive detention can take place without the authority of law, and secondly, that there are still cases which need not go to the Judicial Board. With regard to her first comment, I should like to say respectfully that she is very much mistaken. Although preventive detention is different from detention under ordinary law, nonetheless, preventive detention must take place under law. It cannot be at the will of the executive. That point is perfectly clear. With regard to the second comment which she has made, that the new article 22 excepts certain cases from the purview of the Judicial Board, I admit that that statement is correct. But I also say that it is necessary to make such a distinction, because there may be cases of detention where the circumstances are so severe and the consequences so dangerous that it would not even be desirable to permit the members of the Judicial Board to know the facts regarding the detention of any particular individual. It might be too dangerous, the disclosure of such facts, to the very existence of the State. No doubt, she will realise that there are two mitigating circumstances even in regard to the last category of persons who are to be detained beyond three months, without the intervention of the Judicial Board. The first is this, that such cases will be defined by Parliament. They are not to be arbitrarily decided by the executive. It is only when Parliament lays down in what cases the matter need not go to the Judicial Board, it is only in those cases that the Government will be entitled to detain a person beyond a period of three months. But what is more important to realise is that in every case, whether it is a case which is required to go before the Judicial Board or whether it is a case which is not required to go before the Judicial Board, there shall be a maximum period of detention prescribed by law.

I think, having regard to these amendments, which have been suggested by the Drafting Committee in article 22, there is a great deal of improvement in the original harshness of the provisions embodied in article 15A. Sir, having said what I think is necessary to say about article 22, I will next proceed to take article 373, because that article is intimately connected with article 22.

There has been a great deal of criticism against article 373 and some Members have even challenged the legitimacy or propriety of including such an article in the Constitution. But, in reply, I would like to invite the attention of the Members to this question. What would happen if this article did not find a place in the Constitution? I think it is quite clear that what would happen if this article 373 did not find a place in the Constitution is this, that all persons detained under preventive detention would have to be released forthwith on the 26th of January 1950, if by that date they have undergone the three months' detention permitted by article 22 and if Parliament is not able to pass a law under clause (7) of article 22 permitting a longer period of detention. The question is this: is this a desirable consequence? Is it desirable to allow all persons who are detained under the present law to be released on the 26th of January, simply because Parliament is not in a position to make a law on the 26th of January, 1950 permitting a further period

of detention. It seems to me that that would be a very disastrous consequence. Consequently, it is necessary, in view of the fact that it is quite impossible for Parliament immediately or before the 26th of January to meet and to pass a law which will take effect from that date, to empower some authority under the Constitution to do the work which Parliament is expected to do in order to give full effect to the provisions of article 22. Who is such an authority under the Constitution ? Obviously the President. The President is the only authority who will be in existence on or before the 26th of January and who could expeditiously make a law stepping into the shoes of Parliament and giving effect to the provisions of a article 22 permitting a longer period of detention. It is, therefore, absolutely essential to provide for a break-down of the law relating to preventive detention, to have an article such as 373 empowering the President to enact a law which is within the power of Parliament to enact. Sir, I should further like to add that there is nothing very novel in the provisions contained in article 373, because we have given power by other articles to the President to adapt existing laws in order that they may be brought in conformity with the provisions of the Constitution. Such modification can only be made by Parliament, but we also realise that it would not be possible for Parliament immediately on the 26th of January to adapt so many voluminous laws enacted by the Indian Legislature to bring them in conformity with the Constitution. That power has, therefore, been given to the President. Similarly, by another article we have given to the President the power to amend temporarily this very Constitution for the purpose of removing difficulties. I, therefore, submit that there is nothing novel, there is nothing sinister in this article 373. On the other hand, it is a very necessary complementary article to prevent the breakdown of any law relating to preventive detention.

Now, Sir, I come to article 34 which relates to martial law. This article, too, has been subjected to some strong criticism. I am sorry to say that Members who spoke against article 34 did not quite realise what article 20, clause (1) and article 21 of the Constitution propose to do. Sir, I would like to read article 20, clause (a) and also article 21, because without a proper realisation of the provisions contained in these two articles it would not be possible for any Member to realise the desirability of—I would even go further and say the necessity for—article 34. Article 20, clause (1) says :

“No person shall be convicted of any except offence for violation of a law in force at the time of the commission of the act charged as an offence.”

Article 21 says :

“No person shall be deprived of his life or personal liberty except according to procedure established by law.”

Now, it is obvious that when there is a riot, insurrection or rebellion, or the overthrow of the authority of the State in any particular territory martial law is introduced. The officer in charge of martial law does two things. He declares by his order that certain acts shall be offences against his authority, and, secondly, he prescribes his own procedure for the trial of persons who offend against the acts notified by him as offence, is quite clear that any act notified by the military commander in charge of the disturbed area is not an offence enacted by law in force, because the Commander of the area is not a law-making person. He has no authority to declare that a certain act is an offence, and socondly the violation of any order made by him would not be an offence within the meaning of the phrase “law in force”, because “law in force” can only mean law made by a law-making authority. Moreover, the procedure that the Commander-in-Chief or the military commander prescribes is also not procedure according to law, because he is not entitled to make a law. These are orders which he has

made for the purpose of carrying out his functions, namely, of restoring law and order. Obviously, if article 20 clause (1) and article 21 remain as they are, without any such qualification as is mentioned in article 34, martial law would be impossible in the country, and it would be impossible for the State to restore order quickly in an area which has become rebellious.

It is therefore necessary to make a positive statement or positive provisions to permit that notwithstanding anything contained in article 20 or article 21, any act proclaimed by the Commander-in-Chief as an offence against his order shall be an offence. Similarly, the procedure prescribed by him shall be procedure deemed to be established by law. I hope it will be clear that if article 34 was not in our Constitution, the administration of martial law would be quite impossible and the restoration of peace may become one of the impossibilities of the situation. I therefore submit, Sir, that article 34 is a very necessary article in order to mitigate the severity of articles 20(1) and 21.

Shri H. V. Kamath : May I ask why the indemnification of persons other than public servants is visualised in this article ?

The Honourable Dr. B. R. Ambedkar : Because my friend probably knows if he is a lawyer.....

Shri H. V. Kamath : I am not.

The Honourable Dr. B. R. Ambedkar : That when martial law is there it is not merely the duty of the Commander-in-Chief to punish people, it is the duty of every individual citizen of the State to take the responsibility on his own shoulder and come to the help of the Commander-in-Chief. Consequently if it was found that any person who was an ordinary citizen and did not belong to the Commander-in-Chief's entourage, so to say, does any act it is absolutely essential that he also ought to be indemnified because whatever act he does he does it in the maintenance of the peace of the State and there is a no reason why a distinction should be made for a military officer and a civilian who comes to the rescue of the State to establish peace.

Now, Sir, I come to article 48 which relates to cow slaughter. I Deed not say anything about it because the Drafting Committee has put in an agreed amendment which is No. 549 in List IV. I hope that that would satisfy those who were rather dissatisfied with the new draft of article 48 as proposed by the Drafting Committee.

Then I come to article 77 which deals with rules of business. In the course of the debate on this article, some Members could not understand why this article was at all necessary. Some Members said that if at all this article was necessary the authority to make rules of business should be vested in the Prime Minister. Others said that if this article was at all necessary it was necessary for the purpose of the efficient transaction of business and consequently the word "efficient" ought to be introduced in this clause. Now, Sir, I am sorry to say that not many Members who participated in the debate on article 77 have understood the fundamental basis of this article. With regard to the point that the authority to make rules of business should be vested in the Prime Minister, I think it has not been understood properly that in effect that will be so for the simple reason that although the article speaks of the President, the President is also bound to accept the advice of the Prime Minister. Consequently, the rules that will be issued by the President under article 77 will in fact be issued by the Prime Minister and on his advice.

Now, Sir, in order to understand the exact necessity of article 77, the first thing which is necessary to realise is that article 77 is closely related to article 53. In fact, article 77 merely follows on to article 53. Article 53 makes a very necessary provision. According to the general provisions of the Constitution all executive authority of the Union is to be exercised by the President. It might be contended that, under that general provision, that the executive authority of the Union is to be exercised by the President, such authority as the President is authorised and permitted to exercise shall be exercised by him personally. In order to negate any such contention, article 53 was introduced which specifically says that the executive authority of the Union may be exercised by the President either directly or indirectly through others. In other words, article 53 permits delegation by the President to others to carry out the authority which is vested in him by the Constitution. Now, Sir, this specific provision contained in article 53 permitting the President to exercise his authority through others and not by himself must also be given effect to. Otherwise article 53 will be nugatory. The question may arise as to why it is necessary to make a statutory provision as is proposed to be done in article 77 requiring the President to make rules of business. Why not leave it to the President to do so or not to do so as he likes ? The necessity for making a statutory provision in terms of article 77 is therefore necessary to be explained.

There are two things which must be borne in mind in criticising article 77. The first is that if the President wants to delegate his authority to some other officer or some other authority, there must be some evidence that he has made the delegation. It is not possible for persons who may have to raise such a question in a court of law to prove that the President has delegated the authority. Secondly, if the President by his delegation proposes to give authority to any particular individual to act in his name or in the name of the Government, then also that particular person or that particular officer must be specifically defined. Otherwise a large litigation may arise in a court of law in which the questions as to the delegation by President, the question as to the authority of any particular individual exercising the powers vested in the Union President may become matters of litigation. Those who have been familiar with litigation in our courts will remember that famous case of *Shibnath Banerjee vs. Government of Bengal*. Under the Defence of India Act, the Governor had made certain rules authorising certain persons to arrest certain individuals who committed offences against the Defence of India Act. The question was raised as to whether the particular individual who ordered the arrest under that particular law had the authority to act and in order to satisfy itself the Calcutta High Court called upon the Government of Bengal to prove to its satisfaction that the particular individual who was authorised to arrest was the individual meant by the Government of Bengal. The Government of Bengal had to produce its rules of business for the inspection of the Court before the Court was satisfied that the person who exercised the authority was the person meant by the rules of business.

It is in order to avoid this kind of litigation as to delegation of authority for acts that we thought it was necessary to introduce a provision like article 77. This article of course does not take away the power of the Parliament to make a law permitting other persons to have delegated authority as to permit them to act in the name of the Government of India. But while Parliament does make such a provision it is necessary that the President shall so act as to avoid any kind of litigation that may arise otherwise.

With regard to article 100 which relates to the question of quorum I do not know whether it is necessary for me to say anything in reply. All that I would say is that there is a fear having regard to the comparative figures

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relating to quorum prescribed in other legislative bodies in other countries that the quorum originally fixed was probably too high and we therefore suggested that the quorum should be reduced. The Drafting Committee's proposal is not an absolute proposal, because it is made subject to law made by Parliament. If Parliament after a certain amount of experience as to quorum comes to the conclusion that it is possible to carry on the business of Parliament with a higher quorum there is nothing to prevent Parliament from altering this provision as contained in article 100. The provision therefore is very elastic and permits the existing situation to be taken into account and permits also the future experience to become the guide of Parliament in altering the provision.

Something was said with regard to article 128. It was contended that we ought not to pamper our judges too much. All that I would say is that the question with regard to the salaries of judges is not now subject to scrutiny. The House has already passed a certain scale of salary for existing judges and a certain scale of salary for future judges. The only question that we are called upon to consider is when a person is appointed as a judge of a High Court of a particular State, should it be permissible for the Government to transfer him from that Court to a High Court in any other State? If so, should this transfer be accompanied by some kind of pecuniary allowance which would compensate him for the monetary loss that he might have to sustain by reason of the transfer? The Drafting Committee felt that since all the High Courts so far as the appointment of judges is concerned form now a central subject, it was desirable to treat all the judges of the High Courts throughout India as forming one single cadre like the I.C.S. and that they should be liable to be transferred from one High Court to another. If such power was not reserved to the Centre the administration of justice might become a very difficult matter. It might be necessary that one judge may be transferred from one High Court to another in order to strengthen the High Court elsewhere by importing better talent which may not be locally available. Secondly, it might be desirable to import a new Chief Justice to a High Court because it might be desirable to have a man who is unaffected by local politics and local jealousies. We thought therefore that the power to transfer should be placed in the hands of the Central Government.

We also took into account the fact that this power of transfer of judges from one High Court to another may be abused. A Provincial Government might like to transfer a particular judge from its High Court because that judge had become very inconvenient to the Provincial Government by the particular attitude that he had taken with regard to certain judicial matters, or that he had made a nuisance of himself by giving decisions which the Provincial Government did not like. We have taken care that in effecting these transfers no such considerations ought to prevail. Transfers ought to take place only on the ground of convenience of the general administration. Consequently, we have introduced a provision that such transfers shall take place in consultation with the Chief Justice of India who can be trusted to advise the Government in a manner which is not affected by local or personal prejudices.

The only question, therefore, that remained was whether such transfer should be made so obligatory as not to involve any provision for compensation for loss incurred. We felt that that would be a severe hardship. A judge is generally appointed to the High Court from the local bar. He may have a household there. He may have a house and other things in which he will be personally interested and which form his belongings. If he is transferred

from one High Court to another obviously he cannot transfer all his household. He will have to maintain a household in the original Province in which he worked and he will have to establish a new household in the new Province to which he is transferred. The Drafting Committee felt therefore justified in making provision that where such transfer is made it would be permissible for Parliament to allow a personal allowance to be given to a judge so transferred. I contend that there is nothing wrong in the amendment proposed by the Drafting Committee.

With regard to article 148 I need say nothing at this stage for the simple reason that the amendment moved by my friend Mr. T. T. Krishnamachari (No. 618) is one which has found itself agreeable to all those who had taken interest in this particular article.

Similarly article 320, over which there was so much controversy (if I may say so, without offence, utterly futile controversy) all controversy has now been set at rest by the revised amendment No. 558, which removes the objectionable parts which Members at one stage did not like.

With regard to article 365 there has been already considerable amount of debate and discussion. I also participated in that debate and stated my point of view. I am sure that after taking all that I said into consideration Members will find that article 365 is a necessary article and does not in any sense override the decisions taken by the House at an earlier stage.

I come to article 378. It was contended that this article should contain a provision of a uniform character for determining the population for election purposes. I am sorry to say that I am not in a position to accept this proposal of a uniform rule. It is quite impossible to have a uniform rule in the changing circumstances of the different Provinces. The Centre therefore must retain to itself the liberty to apply different tests to different Provinces for the purpose of determining the population. If any grave departure is made by reason of applying different rules to different Provinces, the matter is still open for the future Parliament to determine, because all matters which have relevance to constituencies will undoubtedly be placed before the Parliament and Parliament will then be in a position to see for itself whether the population as ascertained by the Central Government is proper, or below or above. Now, Sir, I come to article 391.

Pandit Balkrishna Sharma : Article 379?

The Honourable Dr. B.R. Ambedkar : About article 379 I can quite appreciate the objection of my honourable Friend Mr. Sharma. He objects to the words principally "Dominion of India". I tried yesterday with the help of Mr Mukerjee, the Chief Draftsman, my hand to redraft the article with the object of eliminating those words 'Dominion of India'. But I confess that I failed. I would therefore request Mr. Sharma to allow the article to stand as it is. It is unfortunate, but there is not remedy to it that I can see within the short time that was left to us.

Now coming to article 391, the position is this: The Constitution contains two sets of provisions for the creation of new provinces. Provinces can be created after the commencement of the Constitution. New Provinces can be created between 26th November and 26th January. With regard to the creation of Provinces after the commencement of the Constitution, the articles that would become operative are articles 3 and 4. They give power to Parliament to make such changes in the existing boundaries of the provinces in order to create new Provinces. Those articles are so clear that I do not think any further commentary from me is necessary.

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With regard to the creation of new Provinces between now and the 26th of January, the article that would be operative would be section 290 of the Government of India Act of 1935 and article 391 of the present Constitution. Sir, article 391 says that if between now and the 26th of January the authority empowered to take action under the Government of India Act, 1935 does take action, then the President, under article 391 is empowered to give effect to that order made under the Government of India Act Section 290. 'Notwithstanding the fact'—this is an important thing—'notwithstanding the fact that on the 25th January the Government of India Act, 1935, would stand repealed', the action would stand. The President is empowered under article 391 to carry over that action taken under the Government of India Act, 1935 and to give effect to it by an order amending the First Schedule and consequentially the Fourth Schedule which deals with representation in the Council of States.

An Honourable Member : He can only act after 26th January.

An Honourable Member : He can only act after 26th January.

The Honourable Dr. B. R. Ambedkar : He can act at any time. The Constituent Assembly will not be able to take notice of it, because it will not be in existence for this purpose after the 26th November. The point is this that the Government of India Act, 1935 will continue in operation after the 25th November, so long as that Act continues, the Governor-General's right to act under it also continues. He may take action at any time that he likes.

My friend Mr. Sidhwa raised one question, namely that any action that may be taken between now and the 25th January should be subject to the scrutiny of Parliament. I think what he intends is that it should not be merely the act of the executive. My friend Mr. Sidhwa will remember that our Constitution will come into operation on the 26th of January. Till the 25th of January, the Constitution which will be operative in India will be the Constitution embodied in the Government of India Act, 1935, as adapted on 15th August 1947. Therefore, between now and the 25th of January, the Constitution is not the Constitution that we shall be passing, but the Constitution embodied in the Government of India Act 1935. Therefore in replying to his question whether the Parliament should have the right or the Indian legislature should have the right to be consulted in this matter, must be determined by the terms contained in section 290 of the Government of India Act, 1935.

If my friend Mr. Sidhwa were to turn to section 290 of the Government of India Act, he will see that the Governor-General is not required to ascertain the views of the Provincial legislature nor is he required to ascertain the views of the Indian Legislature. All that he is required to do is to ascertain the views of the Government of any Province affected by the order. Therefore, so far as the operation of section 290 is concerned—and it is the only section which can be invoked so far as any action with regard to reconstitution of provinces between now and the 25th January is concerned—this has placed both the Provincial Legislature and the Indian Legislature outside the purview of any consultation that the Governor-General may make for acting under section 290. Therefore with the best wishes in the world it is not possible to carry out the wishes of my friend Mr. Sidhwa. He must therefore remain content with such provisions as we have got under section 290. Sir, I do not think any other article calls for a reply. I would therefore close with the hope that the House will be in a position to accept the amendments proposed by the Drafting Committee. (*Cheers*)

Mr. President : I will now put the amendments one by one to vote. Members have noticed that there are many amendments which arise on some amendment or other of the Drafting Committee. It may be that some of the amendments which have been moved by members may be acceptable to the Drafting Committee and it may be that some Members are willing to withdraw the amendments which they have moved.

Shri T. T. Krishnamachari : May I mention the amendments which we are prepared to accept ?

Mr. President : I was just coming to that. If an indication is given on behalf of the Drafting Committee as to which of the amendments are acceptable to them, we can avoid putting them to the vote, and, if on the other hand, private Members are also able to express as to which of the amendments they would not like to press, we would leave them alone, so that the number of amendments which will have to be put to the vote may be reduced.

Shri T. T. Krishnamachari : Mr. President, Sir, honourable Members of this House will please note that some of the amendments suggested by the Drafting Committee which appear in Lists IV, V, VI and VII, are the result of the discussions with some of the Members who moved amendments which find a place in List I and as a result of the compromise which has been arrived at between them and the Drafting Committee some of these amendments have been moved which, we think, the House will accept. The honourable Members who have moved the original amendments which find a place in List I will, I think, not persist in putting forward these amendments but withdraw them in view of the action taken, by the Drafting Committee by introducing fresh amendments to suit the purpose they had in mind. Barring these amendments, there are a few amendments which we will accept and which find a place in List I. All these amendments happen to be in the name of my honourable Friend, Mr. H. V. Kamath. They are amendments No. 329 to article 164 for changing the name from "Koshal Vidarbh" to "Madhya Pradesh", the first alternative in the two amendments Nos. 394 and 395 to article 320. The Drafting Committee had an amendment to similar effect, but in view of the fact that my honourable Friend has moved this amendment, we are willing to accept it—amendment No. 418 to article 379, and amendment No. 431 to the First Schedule which is a consequence of the acceptance of amendment No. 329. *viz.*, change of name from "Koshal Vidarbh" to "Madhya Pradesh". These amendments we are willing to accept. So far as the other amendments are concerned, the more important ones among them have been accepted by the Drafting Committee themselves tabling amendments to suit the purpose that honourable Members had in mind when they tabled those amendments because we found that the amendments had to be put in a different form to suit legal technicalities. I do hope that honourable Members will help the House by not pressing their amendments.

Shri H. V. Kamath : What about my amendment to article 41 which I discussed with my honourable Friend and which he was willing to accept ?

Mr. President : We shall take it up when we come to that.

Shri T. T. Krishnamachari : I may mention, Sir, that he did mention to me that the words in article 41 should be "State assistance" instead of "public assistance". If the amendment is tabled, you may kindly permit the amendment being moved. I have no objection to the amendment as such but I see that no amendment has been tabled.

Shri H. V. Kamath : My amendment is there, No. 138* in List I.

Shri T. T. Krishnamachari : I will accept that.

Mr. President : You mentioned that this morning. I will now take up my amendments as they have been moved. First, amendment No. 6 by Mr. Kamath.

*138. That in article 41, for the words 'public assistance' the words 'State assistance' be substituted.

Shri B. Das : Sir, you need not read the amendments in List I. We all agree that all our amendments can be withdrawn, because the Drafting Committee have introduced the very amendments in another form. Take for instance my amendment No. 313. It is covered by No. 618. There is no need for your reading out the amendments. We will take it that all the amendments in List I stand withdrawn.

Mr. President : There are other amendments which honourable Members may not like to withdraw. I think I had better put all the amendments to the vote. The question is:

“That in clause (1) of article 1, after the words ‘that is’ a comma be inserted and the comma after the word ‘Bharat’ be deleted.”

The amendment was negatived.

Mr. President : The question is:

“That in sub-clause (a) of clause (3) of article 13

- (i) after the word ‘having’ the words ‘the force of law’ be inserted;
- (ii) after the word ‘India’ the words ‘or any part thereof’ be inserted; and
- (iii) the words ‘the force of law’ be deleted.”

The amendment was negatived.

Mr. President : If I leave out any amendment by mistake, honourable Members will draw my attention to it. Amendment No. 83 to article 22 which has been considerably altered.

Mr. Naziruddin Ahmad : I would like to have leave to withdraw it.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is:

“That article 34 be deleted.”

The amendment was negatived.

Mr. President : There are some other amendments to this article, No. 122.

Shri H. V. Kamath : I withdraw Nos. 122 and 123 but not 124.

Amendment Nos. 122 and 123 were, by leave of the Assembly, withdrawn.

Mr. President : The question is:

“That in article 34, for the words ‘done under martial law’ the words ‘done by such person under martial law’ be substituted.”

The amendment was negatived.

Shri H. V. Kamath : What about my amendment No. 138 to which I referred just now?

Mr. President : Yes. The question is:

“That in, article 41, for the words ‘public assistance’ the words ‘State assistance’ be substituted”.

The amendment was negatived.

Mr. President : We then go to article 48.

Prof. Shibban Lal Saksena : I beg to withdraw my amendment No. 141.

The amendment was, by leave of the Assembly, withdrawn.

Pandit Thakur Das Bhargava : I beg to withdraw all my amendments (142 and 144) relating to article 48.

The amendments were, by leave of the Assembly, withdrawn.

Mr. President : I take it that 549 will take its place. I shall therefore put 549 straightaway to vote.

The question is:

“That in article 48, for the words ‘for improving the breeds of milch and draught cattle including cows and calves and for prohibiting their slaughter’ the words ‘for preserving and improving the breeds and prohibiting the slaughter of cows and calves and other milch and draught cattle’ be substituted.”

The amendment was adopted.

Mr. President : Then we go to article 53.

Shri H. V. Kamath : I beg to withdraw my amendment No. 151.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is:

“That in clause (1) of article 53, after the word ‘Constitution’ the words ‘and the law be added.’”

The amendment was negatived.

Mr. President : Then we go to article 57.

The question is:

“That in article 57, the words ‘subject to the other provisions of this Constitution’, be deleted.”

The amendment was negatived.

Mr. President : The question is:

“That in the form of oath or affirmation in article 69, the words ‘as by law established’ be deleted.”

The amendment was negatived.

Mr. President : The question is:

“That in the form of oath or affirmation in article 69, for the words ‘the duty upon Which I am about to enter’ the words ‘the duties of the office upon which I am about to enter’ be substituted.”

The amendment was negatived.

Mr. President : The question is:

“That in clause (2) of article 71, for the words ‘the date of the decision’, the words ‘the time of the decision’ be substituted.”

The amendment was negatived.

(Mr. Naziruddin Ahmad did not press his amendment No. 584.)

Mr. President : The question is:

“That in clause (2) of article 71, for the words ‘before the date’ the words ‘on or before the date’ be substituted.”

The amendment was adopted.

Prof. Shibban Lal Saksena : I beg to withdraw my amendment No. 201.

The amendment was, by leave of the Assembly, withdrawn.

Shri R. K. Sidhwa : I beg to withdraw my amendment No. 202.

The amendment was, by leave of the Assembly, withdrawn.

Shri H. V. Kamath : Sir, I beg to withdraw my amendment No. 203.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is:

“That in clause (3) of article 77, for the words ‘more convenient’ the words ‘efficient and convenient’ be substituted.

or alternatively

That in clause (3) of article 77, the word ‘more’ be deleted.”

The amendment was negatived.

Mr. President : The question is:

“That in clause (2) of article 96, for the words ‘and shall, notwithstanding anything in article 100, be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings but not in the case of equality of votes’ the words ‘but, notwithstanding anything in article 100, shall not be entitled to vote at all on such resolution or on any other matter during such proceedings’ be substituted.”

The amendment was negatived.

Shri H. V. Kamath : I withdraw, my amendment No. 228.

The amendment was, by leave of the Assembly, withdrawn.

(Mr. H. V. Kamath did not press his amendment Nos. 231, 234 and 235.)

Mr. President : There is amendment No. 233 to article 100. I think I had not better put it to vote just now, I think it is a renumbering of paragraphs.

Amendment No. 238 stands in the name of Mr. Kamath and Prof. Shibban Lal Saksena. I forgot who moved it.

Prof. Shibban Lal Saksena : That has been accepted.

Shri T. T. Krishnamachari : That is covered by amendment No. 452.

Mr. President : I take it that amendment No. 238 is withdrawn.

Prof. Shibban Lal Saksena : Yes, Sir.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : As for amendment No. 452, I had better leave that for the present.

The question is:

“That in clause (3) of article 100, for the word ‘one-tenth’ the word ‘one-sixth’ be substituted.”

The amendment was negatived.

Mr. President : The question is:

“That in article 128, for the words ‘the President may by order’ the words ‘Parliament may by law’ be substituted.”

The amendment was negatived.

Mr. President : The question is:

“That sub-clause (3) of clause (1) article 145 be deleted and before clause (1) of article 145, the following be inserted:—

“The Supreme Court shall make rules for regulating the practice and procedure of the appropriate proceeding relating to the enforcement of rights conferred under Part III; and the subsequent clauses be renumbered accordingly.”

The amendment was negatived.

Mr. President : The question is:

“That sub-clause (c) of clause (1) of article 145 be deleted; and after clause (1) of the said article, the following new clause be inserted and consequential changes be made:—

(2) The Supreme Court shall make rules for regulating the practice and procedure of the appropriate proceedings relating to the enforcement of rights conferred under Part III.’ ”

The amendment was negatived.

Mr. President : Amendment No. 313. There is another amendment. It is covered by amendment 618 of the Drafting Committee.

Shri B. Das : I beg leave to withdraw this, Sir.

The amendment was, by leave of the Assembly, withdrawn.

Shri H. V. Kamath : 'I beg leave to withdraw No. 320.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is :

“That in clause (1) of article 154, after the word ‘Constitution’ the words ‘and the be added.’”

The amendment was negatived.

Mr. President : The question is :

“That in the proviso to clause (1) of article 164, for the words ‘Koshal Vidarbh’ the words ‘Madhya Pradesh’ be substituted.”

The amendment was adopted.

Prof. Shibban Lal Saksena : I beg leave to withdraw No. 332.

Shri R. K. Sidhwa : And No. 333, Sir.

The amendments were, by leave of the Assembly, withdrawn.

Mr. President : The question is:

“That in clause (3) of article 166, for the words ‘more convenient’ the word ‘efficient’ be substituted.”

The amendment was negatived.

Mr. President : The question is :

“That in clause (3) of article 166, the words ‘in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion’ be deleted.”

The amendment was negatived.

Shri H. V. Kamath : I beg leave to withdraw No. 340.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is :

“That in clause (2) of article 172, for the word ‘possible’ the word ‘practicable’ be substituted.”

The amendment was negatived.

Mr. President : The question is:

“That in clause (2) of article 181, for the words land shall, notwithstanding anything in article 189, be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings but not in the case of equality of votes’ the words ‘but not with standing anything in article 189, shall not be entitled to vote on such resolution or on any matter during such proceedings’ be substituted.”

The amendment was negatived.

Shri H. V. Kamath : I beg leave to withdraw No. 344.

The amendments were, by leave of the Assembly, withdrawn.

Mr. President : The question is :

“That in clause (2) of article 185, for the words ‘and shall, notwithstanding anything in article 189, be entitled to vote only in the first instance on such resolution or on any other matter

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during such proceedings but not in the case of equality of votes' the words 'but, notwithstanding any thing in article 189, shall not be entitled to vote on such resolution or on any matter during such proceedings' be substituted."

The amendment was negatived.

Shri H. V. Kamath : I beg leave to withdraw 346.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is :

"That in the second paragraph of clause (3) of article 189, for the words 'The quorum shall, until the legislature of the State by law otherwise provides,' the words 'Until the legislature of the State by law otherwise provides, the quorum shall' be substituted."

The amendment was negatived.

Shri H. V. Kamath : Is that not covered by an amendment of the Drafting Committee?

Mr. President : It has a different Wording. If it is covered by any other amendment, it will be taken up.

The question is :

That in clause (3) of article 189. for the words 'ten' and 'one-tenth' the words 'twenty' and one-eighth' be substituted."

The amendment was negatived.

Shri R. K. Sidhwa : Sir, I withdraw No. 353.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is :

The Clause (2) of article 222 be deleted."

The amendment was negatived.

Mr. President : The question is :

"That in article 224, for the words 'the President may by order' the words 'Parliament may by law be substituted."

The amendment was negatived.

Pandit Thakur Das Bhargava : I beg leave to withdraw No. 383.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is :

"That in the proviso to article 309, the words 'or such person as, he may direct, wherever they occur, be deleted."

The amendment was negatived.

Mr. President : The question is :

"That in clause (3) of article 311, for the words 'reasonably practicable to give to any person an opportunity' the words 'practicable to give to any person a reasonable opportunity' be substituted."

The amendment was negatived

Shri H. V. Kamath : I beg to withdraw No. 389.

The amendment was, by leave of the Assembly withdrawn.

Mr. President : The question is :

"That in clause (c) of article 319, for the words 'other than a Joint Commission' the words or as the Chairman of a joint Commission' be substituted:'

The amendment was negatived.

Mr. President : Amendment No. 394.

Shri H. V. Kamath : Nos. 394 and 395 have been accepted, Sir; the first alternative.

Shri T. T. Krishnamachari : They may be put together; they are practically the same.

Mr. President : The question is:

“That in sub-clause (d) of clause (3) of article, 320, for the words ‘under an Indian State’ the words ‘under the Government of an Indian State’ be substituted.”

The amendment was adopted.

Mr. President : The question is :

“That in sub-clause (e) of clause (3) of article 320, for the words ‘under an Indian State’ the words ‘under the Government of an Indian State’ be substituted.”

The amendment was adopted.

Pandit Thakur Das Bhargava : I withdraw No. 396.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is :

“That in article 325, for the words ‘shall be ineligible for inclusion in any such roll or claim to be included in’ the words ‘shall be excluded from or claim to be included in’ be substituted.”

The amendment was negatived.

Mr. President : Article 333.

Shri H. V. Kamath : There is my amendment No. 399, Sir.

Mr. President : I do not know if it arises; however, I shall put it to vote.

The question is :

“That in article 325, after the word caste, the word ‘class’ be inserted.”

The amendment was negatived.

Mr. President : The question is :

“That in clause (3) of article 344, for the words ‘persons belonging to the non-Hindi speaking areas the words ‘the non-Hindi speaking sections of the population’ be substituted.”

The amendment was negatived.

Mr. President : The question is

“That article 365 be deleted.”

The amendment was negatived.

Mr. President : The question is :

“That in article 365, after the word Where’ the words ‘The President is satisfied that’ be inserted.”

The amendment was negatived.

Mr. President : The question is :

“That in article 365, after the words ‘under any of the provisions of this Constitution’ the words ‘which is in direct contravention of the declared policy of the Union’ be inserted.

The amendment was negatived.

Mr. President : The question is :

“That article 373 be deleted.”

The amendment was negatived.

Mr. President : The question is :

“That in article 373, for the words ‘one year’ the words three months’ be substituted.”

The amendment was negatived.

Mr. President : The question is :

“That in clause (5) of article 379, for the words ‘after such commencement’ the words ‘on commencement’ be substituted.”

The amendment was adopted.

Pandit Balkrishna Sharma : Amendment No. 416 has been left out.

Mr. President : I will take it along with amendment No. 503. The question is :

“That in article 387 the words ‘and different provisions may be made for different States and for different purposes by such order’ be substituted.”

The amendment was negatived.

Shri H. V. Kamath : I withdraw Nos. 424 and 425.

Shri R. K. Sidhwa : Also No. 426.

The amendments were, by leave of the Assembly, withdrawn.

Mr. President : The question is :

“That in clause (3) of article 392 for the word ‘before’ the word ‘until’ be substituted.”

The amendment was negatived.

Mr. President : The question is :

“That in clause (3) of article 392 for the word ‘before’ the words ‘until immediately before’ be substituted “

The amendment was negatived.

Mr. President : The question is :

“That in item 5 of Part A of the First Schedule for the name ‘Koshal Vidarbh’ the name Madhya Pradesh’ be substituted.”

The amendment was adopted.

Shri H. V. Kamath : I withdraw No. 432.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is :

“That in item 9 of Part A of the First Schedule, for the name ‘The United Provinces the name ‘Aryavarta’ be substituted.”

The amendment was negatived.

Mr. President : The question is :

“That in sub-paragraph (3) of paragraph 9 the words beginning with ‘during the period’ and ending ‘before such commencement’ be deleted.”

The amendment was negatived.

Mr. President : The question is:

“That sub-paragraph (2) of paragraph 10 be deleted.”

The amendment was negatived.

Mr. President : The question is :

“That in subparagraph (4) of paragraph 10, for the words ‘for any State’ the words of any State’ be substituted.”

The amendment was negatived.

Mr. President : The question is:

“That in sub-paragraph (3) of paragraph 12, for the word ‘and’ occurring in line 1, a comma be substituted.”

The amendment was negatived.

Mr. President : The question is :

“That in the Fourth Schedule in Column I, for the name ‘Koshal Vidarbh ‘the name Madhya Pradesh ‘ be substituted.”

The amendment was adopted.

Mr. President : The question is :

“That in entry I of List I of the Seventh Schedule, after the word ‘preparation’ the words and operation’ be inserted.”

The amendment was negatived.

Mr. President : The question is :

“That in entry 65 of List I of the Seventh Schedule, before the word ‘police’ the words “Administrative or’ be inserted.”

The amendment was negatived.

Mr. President : The question is :

“That entry 34 of List III be transferred to List I.”

The amendment was negatived.

Mr. President : The question is

“That in article 9 after the word and figure ‘article the words ‘or be deemed to be a citizen of India by virtue of’ be inserted.”

The amendment was adopted.

Shri T. T. Krishnamachari : Sir, I withdraw No. 443.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is :

“That in the Explanation to article 58, for the words ‘For the purposes of this clause the words ‘For the purposes of this article’ be substituted.”

The amendment was adopted.

Mr. President : The question is :

“That for clause (3) of article 59 the following clause be substituted:

‘(3) The President shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowances, and privileges as are specified in the Second Schedule.”

The amendment was adopted.

Mr. President : The question is :

“That in clause (3) of article 65 for the words ‘privileges, emoluments and allowances in the two places where they occur, the words ‘emoluments, allowances and privileges’ be substituted.”

The amendment was adopted.

Mr. President : 447.

Dr. P. S. Deshmukh : All the Drafting Committee's amendments may be put together.

The Honourable Shri K. Santhanam : Some of them might not have been moved.

Mr. President : Then I will go as it is one by one.

The question is:

"That in the Explanation to article 66 for the words 'For the purposes of this clause' the words 'For the purposes of this article' be substituted."

The amendment was adopted.

Mr. President : The question is :

"That amendment No. 449 of List 11 be deleted."

The amendment was negatived.

Mr. President : The question is :

"That in sub-clause (b) of clause (1) of article 72 for the words 'offence under any law the words 'offence against any law' be substituted."

The amendment was adopted.

(Mr. Naziruddin Ahmad did not press his amendment No. 586)

Mr. President : The question is :

"That in the proviso to clause (1) of article 73 after the words 'any State' the words and letters 'specified in Part A or Part B of the First Schedule' be inserted."

The amendment was adopted.

Mr. President : The question is :

"That in sub-clause (a) of clause (1) of article 81, for the word and figures 'article 331' the words and figures 'articles 82 and 331' be substituted."

The amendment was adopted.

Mr. President : The question is :

"That in amendment No. 452 of List 11, in the proposed clause (3) of article 100, for the words until Parliament by law otherwise provides, the quorum' the words 'The quorum' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 452 of List It in the proposed clause (3), of article 100 for the word one-tenth' the word one- sixth be substituted."

The amendment was negatived.

Shri R. K. Sidhwa : I withdraw No. 589.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is

'That for clause (3) of article 100 the following clauses be substituted:

- (3) Until Parliament by law otherwise provides, the quorum to constitute a meeting of either House of Parliament shall be one-tenth of the total number the House.
- (4) If at any time during a meeting of a House there is no quorum, it shall be the duty of the Chairman or Speaker or person acting as such, either to adjourn the House or to suspend the meeting until there is a quorum."

The amendment was adopted.

Mr. President : The question is :

“That in article 104 for the words ‘the Government of India’ the words ‘the Union’ be substituted.”

The amendment was adopted.

Mr. President : The question is :

“That in clause (1) of article 105 for the words ‘Subject to the rules and standing orders’ the words ‘Subject to the provisions of this Constitution and to the rules and standing orders’ be substituted.”

The amendment was adopted.

Mr. President : The question is

“That in amendment No. 455 of List II in clause (2) of article 114, for the words ‘whether an amendment is inadmissible’ (proposed to be substituted) the words ‘as to the admissibility of the amendment’ be substituted.”

The amendment was negated.

Mr. President : Then I put amendment No. 455 to vote.

The question is

“That in clause (2) of article 114, for the words ‘the amendments which are admissible’ the words ‘whether an amendment is inadmissible’ be substituted.”

The amendment was adopted.

(Mr. Naziruddin Ahmad did not press his amendment No. 591).

Mr. President : The question is :

“That in clause (1) of article 124, for the words ‘seven other Judges’ the words ‘not more than seven other Judges’ be substituted.”

The amendment was adopted.

Mr. President : That the proviso to clause (1) of article 133 be omitted and for the colon at the end of the said clause a ‘full stop’ be substituted.”

The amendment was adopted.

Mr. President : The question is:

“That after clause (2) of article 133, the following clause be added:—

‘3. Notwithstanding anything in this article. No appeal shall, unless Parliament by law otherwise provides, lie to the Supreme Court from the judgment, decree or final order of one Judge of a High Court.’ ”

The amendment was adopted.

Mr. President : Then article 135, and amendment No. 458.

The question is:

“That in article 135, for the words ‘not being a matter referred to in any of the foregoing provisions of this Chapter’ the words ‘to which the provisions of article 133 or article 134 do not apply’ be substituted.”

The amendment was adopted.

Mr. President : Amendment No. 459.

The question is:

“That in clause (1) of article 136, for the words ‘The Supreme Court’ the words ‘Notwithstanding anything in this Chapter, the Supreme Court’ be substituted.”

The amendment was adopted.

Mr. President : Then we come to article 145. There is amendment No. 460 of the Drafting Committee and there is also No. 550 of Mr. Kamath.

Shri H. V. Kamath : Sir, I withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : Then I put amendment No. 460.

The question is :

“That in sub-clause (c) of clause (1) of article 145, for the words ‘enforcement of the rights’ the words ‘enforcement of any of the rights’ be substituted.”

The amendment was adopted.

Mr. President : Article 158, and amendment No. 461.

The question is :

“That for clause (3) of article 158, the following clause be substituted:—

‘(3) The Governor shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.’ ”

The amendment was adopted.

Mr. President : No. 462.

The question is:

“That in the proviso to article 162, for the words ‘the Government of India’ the words ‘the Union’ be substituted.”

The amendment was adopted.

Mr. President : No. 463. And to that there is the amendment No. 594 by Mr. Naziruddin Ahmad.

Shri T. T. Krishnamachari : There is another amendment to article 168 that I have moved, that ‘Bengal’ may be changed to ‘West Bengal’. So it may be put as amended.

Mr. President : Yes, we take that amendment which has been moved today with regard to the name of Bengal, along with this, and all the consequential changes with regard to the name “Bengal”, “West Bengal” will be put in place of “Bengal”.

The question is:

“That for sub-clause (a) of clause (1) of article 168, the following sub-clause be substituted:—

‘(a) in the States of West Bengal, Bihar, Bombay, Madras, Punjab and the United Provinces, two Houses.’

The amendment was adopted.

Mr. President : Article 181, amendment No. 464.

The question is :

“That in clause (1) of article 181, the words ‘of a State’ omitted.”

The amendment was adopted.

Mr. President : Article 181, amendment No. 465.

The question is :

“That in clause (2) of article 181, for the word ‘House’ the word ‘Assembly’ be substituted.”

The amendment was adopted.

Mr. President : Amendment No. 466, and there is No. 595 to this.

Shri T. T. Krishnamachari : No. 595 is a negative amendment.

Mr. President : Well then. The question is:

“That in clause (1) of article 185, the words ‘of a State’ be omitted.”

The amendment was adopted.

Mr. President : Article 189 and amendment No. 467. There are several amendments to this. There is No. 596 of Mr. Naziruddin Ahmad.

Shri T. T. Krishnamachari : It is the same as No. 100. Probably the honourable Member will be willing to withdraw it.

Mr. Naziruddin Ahmad : I beg leave to withdraw it.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : Then there is No. 597 of Mr. Sidhva. Do you press it? It is about “ten members or one-tenth” and “twenty members or one-sixth”.

Shri R. K. Sidhwa : Yes, Sir.

Mr. President : Well then. The question is:

“That in amendment No. 467 of List II, in the proposed clause (3) of article 189, for the words ‘ten members or one-tenth’ the words ‘twenty members or one-sixth’ be substituted.”

The amendment was negatived.

Mr. President : Then No. 598. You withdraw it, I suppose?

Shri R. K. Sidhwa : I withdraw it.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : Amendment No. 467. The question is:

“That for clause (3) of article 189, the following clauses be substituted:—

(3) Until the Legislature of the State by law otherwise provides, the quorum to constitute a meeting of a House of the Legislature of a State shall be ten members or one-tenth of the total number of members of the House, whichever is greater.

(4) If at any time during the meeting of the Legislative Assembly or the legislative Council of a State there is no quorum, it shall be the duty of the Speaker or Chairman, or person acting as such, either to adjourn the House or to suspend the meeting until there is a quorum.’ ”

The amendment was adopted.

Mr. President : No. 468. The question is:

“That in sub-clause (e) of clause (1) of article 191, for the words ‘the Legislature of the state’ the word ‘Parliament’ be substituted.”

The amendment was adopted.

Mr. President : No. 469. The question is:

“That in clause (2) of article 191, for the words ‘either for India or for any such State’ the words ‘either for the Union or for such State’ be substituted.”

The amendment was adopted.

Mr. President : No. 470. The question is:

“That in article 193 for the words ‘the Legislature of the State’ the words ‘Parliament or the Legislature of the State’ be substituted.”

The amendment was adopted.

Mr. President : Then No. 471. There is an amendment to this—No. 554 of Mr. Kamath.

Shri H. V. Kamath : Sir, I withdraw that amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : Then the question is:

“That in clause (1) of article 194, for the words ‘Subject to the rules and standing orders’ the words ‘Subject to the provisions of this Constitution and to the rules and standing orders’ be substituted.”

The amendment was adopted.

Mr. President : No. 472. The question is:

“That in clause (2) of article 204, for the words ‘the amendments which are admissible’ the words ‘whether an amendment is inadmissible’ be substituted.”

The amendment was adopted.

Mr. President : No. 473. The question is:

“That for clause (c) of the proviso to clause (1) of article 217, the following clause be substituted:—

(c) the office of a Judge shall be vacated by his being appointed by the President to be a Judge of the Supreme Court or by his being transferred by the President to any other High Court within the territory of India.”

The amendment was adopted.

(Mr. Naziruddin Ahmad did not press his amendment Nos. 599, 600 and 601.)

Mr. President : No. 474. The question is:

“That in article 230, after the words ‘any State’ the words ‘specified in the First Schedule’ be inserted”.

The amendment was adopted.

Mr. President : No. 475. The question is:

“That in article 232 after the words ‘more than one State’ the words ‘specified in the First Schedule be inserted.”

The amendment was, adopted.

Mr. President : No. 476. The question is:

“That in article 234, after the word ‘Governor’ the words ‘of the State’ be inserted, and after the words ‘High Court’ the words ‘exercising jurisdiction in relation to such State’ be inserted.”

The amendment was adopted.

Mr. President : No. 477. The question is:

“That in item (4) of article 238, in the proposed clause (3) of article 158, for the words ‘entitled to the use of an official residence without payment of rent, and there shall be paid to the Rajpramukh such allowances’ the words ‘entitled without payment of rent to the use of an official residence and shall be also entitled to such allowances and privileges’ be substituted.”

The amendment was adopted.

Mr. President : No. 478. That is withdrawn, as it is covered by No. 556. No. 479 is also withdrawn.

No. 480. The question is:

“That in clause (2) of article 289 for the words ‘any property used or occupied for the purposes thereof, or any income accruing or arising therefrom’ the words ‘any property used or occupied for the purposes of such trade or business, or any income accruing or arising, in connection therewith, be substituted.”

The amendment was adopted.

Mr. President : No. 481. The question is:

“That for article 294, the following article be substituted:—

‘294. *Succession to property, assets, rights, liabilities and obligations in certain cases.*—As from the commencement of this Constitution—

- (a) all property and assets which immediately before such commencement were vested in His Majesty for the purposes of the Government of the Dominion of India and all property and assets which immediately before such commencement were vested in His Majesty for the purposes of the Government of each Governor’s Province shall vest respectively in the Union and the corresponding State, and
- (b) All rights, liabilities, and obligations of the Government of the Dominion of India and of the Government of each Governor’s Province, whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations respectively of the Government of India and the Government of each corresponding State,

subject to any adjustment made or to be made by reason of the creation before the commencement of this Constitution of the Dominion of Pakistan or of the Provinces of West Bengal, East Bengal, West Punjab and East Punjab.’ ”

The amendment was adopted.

(Mr. Naziruddin Ahmad did not press his amendment Nos. 604 and 606 to articles 294 and 366 respectively.)

Mr. President : No. 482. The question is:

“That in sub-clause (a) of clause (1) of article 295, for the words ‘the commencement of this Constitution’ the words ‘such commencement’ be substituted.”

The amendment was adopted.

Mr. President : No. 483. The question is:

“That in sub-clause (a) of clause (1) of article 295, for the words ‘the Government of India’ the words ‘the Union’ be substituted.”

The amendment was adopted.

Mr. President : No. 484. The question is:

“That in article 296, after the words ‘His Majesty’ in the first place where they occur, the words ‘or, as the case may be, to the Ruler of an Indian State’ be inserted.”

The amendment was adopted.

Mr. President : No. 485. The question is:

“That in the proviso to article 296, after the words ‘His Majesty’ the words ‘or to the Ruler of an Indian State’ be inserted.”

The amendment was adopted.

Mr. President : No. 486. The question is:

“That to article 296, the following Explanation be added:—

“Explanation.—In this article, the expressions ‘Ruler’ and ‘Indian State’ have the same meanings as in article 363.’ ”

The amendment was adopted.

Mr. President : No. 487. The question is:

“That in the proviso to clause (1) of article 316, for the words ‘under an Indian State’ the words ‘under the Government of an Indian State’ be substituted.”

The amendment was adopted.

Mr. President : Then article 319. Amendments 488, 489 and 490. There is some substitution for these. These are, therefore, withdrawn, I take it. Then article 320. Amendment No. 491. But amendment No. 559 covers it, and so I take it that No. 491 is withdrawn.

Then article 351 and amendment No. 492.

The question is :

“That in article 351, the words ‘so specified’ be deleted.”

The amendment was adopted.

Mr. President : No. 493. The question is:

“That in clause (2) of article 352, the brackets and words ‘(in this Constitution referred to as a “Proclamation of Emergency”)’ be omitted.”

The amendment was adopted.

Mr. President : No. 494. The question is:

“That in clause (b) of article 353, for the words ‘the Government of India or officers and authorities of the Government of India’ the words ‘the Union or officers and authorities of the Union’ be substituted.”

The amendment was adopted.

Mr. President : No. 495. The question is:

“That in sub-clause (b) of clause (1) of article 357, for the words ‘the Government of India or officers and authorities of that Government’ the words ‘the Union or officers and authorities thereof’ be substituted.”

The amendment was adopted.

Mr. President : Article 365: Amendment No. 496. But we have amendment No. 561 which has taken the place of amendment No. 496, and so it is withdrawn.

Article 366. The question is:

“That clause (12) of article 366 be omitted.”

The amendment was adopted.

Mr. President : The question is:

“That clauses (13), (14), (15), (16), (17), and (18) of article 366 be renumbered as clauses (12), (13), (14), (15), (16), and (17) respectively.”

The amendment was adopted.

Mr. President : The question is:

“That after clause (17) as so renumbered, the following clause be inserted:—

“(18) ‘Proclamation of Emergency’ means a Proclamation issued under clause (1) of article 352;”

The amendment was adopted.

Mr. President : Then we come to amendment No. 500.

Shri T. T. Krishnamachari : Sir, it has been replaced by amendment No. 562.

Mr. President : I shall, therefore, treat it as withdrawn. I am told 501 was not moved. Let us therefore go to 502.

The question is:

“That in clause (2) of article 370, for the words, brackets, letters and figures ‘in paragraph (ii) of sub-clause (b) or in the second proviso to sub-clause (d) of clause (1)’

the words, brackets, letters and figure 'in paragraph (ii) of sub-clause (b) of clause (1) or in the second proviso to sub-clause (d) of that clause' be substituted."

The amendment was adopted.

Mr. President : I find there are several amendments to 503.

Pandit Balkrishna Sharma : Sir, I withdraw Nos. 416 and 417.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is:

"That with reference to amendment No. 503 of List II, in clause (1) of article 379, for the words 'the body functioning as the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution' the words 'the Constituent Assembly of India' be substituted."

The amendment was negatived.

Mr. President : No. 564 is withdrawn. The question is:

"That in clause (1) of article 379, for the words 'shall exercise' the words 'shall be the provisional Parliament and shall exercise' be substituted."

The amendment was adopted.

Mr. President : The question is:

"That in clause (2) of article 388, for the words 'the provisional legislature' the words 'the Legislature' be substituted."

The amendment was adopted.

Mr. President : There is one amendment (No. 530) which I allowed Dr. Deshmukh to move to article 335 that after the word "members" the words "the Backward classes" be inserted.

The question is:

"That in article 335, after the word 'members' the words 'the Backward Classes' be inserted."

The amendment was negatived.

Mr. President : Then we come to amendment No. 545. There are several amendments to this. The question is:

"That in amendment No. 545 of List IV, the proviso to sub-clause (a) of the proposed clause (4) of article 22 be deleted."

The amendment was negatived.

Mr. President : Mr. Ajit Prasad Jain's amendment No. 580 does not arise. I shall put 581 to vote. The question is:

"That in amendment No. 545 of List IV, in sub-clause (a) of the proposed clause (4) of article 22, for the word 'or' occurring at the end the word 'and' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That with reference to amendment No. 545 of List IV, for sub-clause (b) of the proposed clause (4) of article 22, the following be substituted:

'(b) such person is detained in accordance with the provisions of any law made by a State under the authority conferred by Parliament under clause (7).'

The amendment was negatived.

Mr. President : The question is:

“That with reference to amendment No. 545 of List IV, for sub-clause (b) of clause (4) of article 22, the following be substituted:—

‘(b) such person is detained in accordance with the provisions of any law made under the authority conferred by Parliament under clause (7).’ ”

The amendment was negatived.

Mr. President : The question is:

“That for clause (4) of article 22, the following clause be substituted:—

‘(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless—

(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or

(b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clause (a) and (b) of clause (7).’ ”

The amendment was adopted.

Mr. President : I find there are two amendments to amendment 546. Let me put Mr. Kamath’s amendment to vote first.

The question is:

“That in amendment No. 546 of List IV, in sub-clause (a) of the proposed clause (7) of article 22, the words ‘without obtaining the opinion of an advisory Board in accordance with the provisions of sub-clause (a) of clause (4)’ be deleted.”

The amendment was negatived.

Shrimati Purnima Banerji : Sir, I withdraw my amendment No. 617.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is:

“That for clause (7) of article 22, the following clause be substituted:—

‘(7) Parliament may by law prescribe—

(a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4);

(b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and

(c) the procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause (4).’ ”

The amendment was adopted.

Mr. President : The question is:

“That in clause (4) of article 32, for the word ‘rights’ the word ‘right’ be substituted.”

The amendment was adopted.

Amendment Nos. 551, 552 and 553 Were, by leave of the Assembly, withdrawn.

Mr. President : The question is:

“That in clause (1) of article 222, after the words ‘The President may the words’ after consultation with the Chief Justice of India’ be inserted.”

The amendment was adopted.

Mr. President : The question is:

“That for the Explanation to clause (1) of article 288, the following) be substituted:-

Explanation.—The expression ‘law of a State in force’ in this clause shall include a law of a State passed or made before the commencement of this Constitution and not previously repealed, notwithstanding that it or parts of it may not be then in operation either at all or in particular areas.’ ”

The amendment was adopted.

Mr. President : The question is:

“That in clause (c) of article 319, for the words ‘as the Chairman of a State Public Service Commission other than a Joint Commission’ the words ‘as the Chairman of the Union Public Service Commission or as the Chairman of a State Public Service Commission’ be substituted.”

The amendment was adopted.

Mr. President : The question is :

“That in clause (d) of article 319, for the words ‘as the Chairman of any other State Public Service Commission’ the words ‘as the Chairman of that or any other State Public Service Commission’ be substituted.”

The amendment was adopted.

Mr. President : The question is:

“That for clause (4) of article 320, the following clause be substituted:—

‘(4) Nothing in clause (3) shall require a Public Service Commission to be consulted as respects the manner in which any provision referred to in clause (4) of article 16 may be made or as respects the manner in which effect may be given to the provisions of article 335.’ ”

The amendment was adopted.

Mr. President : The question is:

“That for article 347, the following article be substituted:—

‘347. *Special provision relating to language spoken by a section of the population of a State.* On a demand being made in that behalf, the President may, if he is satisfied that a substantial proportion of the population of a State desire the use of any language spoken by them to be recognised by that State, direct that such language shall also be officially recognised throughout that State or any part thereof for such purpose as he may specify.’

The motion was adopted.

Mr. President : The question is:

“That in article 365, for the words ‘the President may hold’ the words ‘it shall be lawful for the President to hold’ be substituted.”

The amendment was adopted.

Mr. President : The question is:

“That in amendment No. 500 of List II, the proviso to the proposed new clause (3) of article 367 be deleted.”

The amendment was negatived.

Mr. President : Amendment No. 562A.

Shri T. T. Krishnamachari : With the change as suggested by me.

Mr. President : Yes. It will now read as follows and I will put it to vote.

The question is:

“That in article 367, the following clause be added:—

‘(3) For the purposes of this Constitution ‘foreign State’ means any State other than India:

Provided that, subject to the provisions of any law made by Parliament, the President may by order declare any State not to be a foreign State for such purposes as may be specified in the order.”

The amendment was adopted.

Mr. President : The question is:

“That in article 385, for the words ‘such. commencement’ the words ‘the commencement of this Constitution’ be substituted.”

The amendment was adopted.

Mr. President : The question is:

“That in clause (1) of article 388, for the words ‘the President of the Union’ in the two places where they occur, the words ‘the President of India’ be substituted”

The amendment was adopted.

Mr. President : The question is:

“That in the first proviso to clause (1) of article 388, for the words mentioned in this article’ the words ‘mentioned in this clause’ be substituted.”

The amendment was adopted.

Mr. President : Amendment No. 568. There is an amendment, No. 621, to this amendment by Mr. Kamath. I will put it first. ‘The question is:

“That with reference to amendment No. 568 of List IV, in the first proviso to clause (1) of article 388, the words and letter ‘Part A of’ be deleted.”

The amendment was negatived.

Mr. President : Then I will put No. 568.

The question is:

“That in the first proviso to clause (1) of article 388, for the words ‘representing a State’ the words ‘representing a Province or, as the case may be, a State’ be substituted.”

The amendment was adopted.

Mr. President : Amendment No. 569. There is amendment No. 622 to this amendment. I will put No. 622 first.

The question is:

“That with reference to amendment No. 569 of List IV, in the second proviso to clause (1) of article 388, the words and letter ‘Part A of’ be deleted.”

The amendment was negatived.

Mr. President : The question is:

“That in the second proviso to clause (1) of article 388, for the words ‘representing a State’ the words ‘representing a Province or a State be substituted.”

The amendment was adopted.,

Mr. President Amendment No. 570. There is an amendment to this, No. 623 which I will put first.

The question is:

“That with reference to amendment No. 570 of List IV, in the second proviso to clause (1) of article 388, for the words ‘the Legislative Assembly of that State’ the words ‘the Legislative Assembly of that Province or of the corresponding State or of that State, wherever such Assembly has been constituted’ be substituted.”

The amendment was negatived.

Mr. President : The question is:

“That in the second proviso to clause (1) of article 388, for the words ‘Legislative Assembly of that State’ the words ‘Legislative Assembly of that Province or of the corresponding state or of that State, as the case may be’, be substituted.”

The amendment was adopted.

Mr. President : The question is:

“That in article 390, for the words out of such Fund the words ‘out of either of such Funds’ be substituted.”

The amendment was adopted.

Mr. President : The question is:

“That for clause (3) of article 392, the following clause be substituted:—

(3) The powers conferred on the President by this article, by article 324, by clause (3) of article 367 and by article 391 shall, before the commencement of this Constitution, be exercisable by the Governor-General of the Dominion of India.’ ”

The amendment was adopted.

Mr. President : The question is:

“That in article 394, after the figure ‘60’, the figure ‘324’, be inserted, and after the figure ‘388’ the figure ‘391’, be inserted.”

The amendment was adopted.

Mr. President : The question is:

“That in Part A of the First Schedule under the sub-heading ‘Territories of States’, the paragraph commencing with the words ‘The territory of the State of Bombay.’ and ending with the words and figure ‘Extra-Provincial Jurisdiction Act, 1947’ be omitted.”

The amendment was adopted.

Mr. President : The question is:

“That in Part B of the First Schedule, for the paragraph under the sub-heading ‘Territories of States’, the following paragraph be substituted.”

“The territory of each of the States in this Part shall comprise the territory which immediately before the commencement of this Constitution was comprised in the corresponding Indian State, and—

- (a) in the case of each of the States of Rajasthan and Saurashtra, shall also comprise the territories which immediately before such commencement were being administered by the Government of the corresponding Indian State, whether under the provisions of the Extra-Provincial Jurisdiction Act, 1947, or otherwise; and
- (b) in the case of the State of Madhya Bharat, shall also comprise the territory which immediately before such commencement was comprised in the Chief Commissioner’s Province of Panth Piploda.’ “

The amendment was adopted.

Mr. President : The question is :

“That in Part C of the First Schedule, for the first two paragraphs under the sub-heading. ‘Territories of States’ the following paragraph be substituted:—

The territory of each of the States of Ajmer, Coorg and Delhi shall comprise the territory which immediately before the commencement of this Constitution was comprised in the Chief Commissioner’s Province of Ajmer-Marwara, Coorg and Delhi, respectively.’ ”

The amendment was adopted.

Mr. President : The question is:

“That in List I of the Seventh Schedule, for entry 8, the following entry be substituted:—

‘8. Central Bureau of Intelligence and Investigation.’ ”

The amendment was adopted.

Mr. President : Then we come to List V. Amendment No. 614 has not been moved. I will put 615 to the House.

The question is:

“That in entry 75 of List I of the Seventh Schedule, after the words ‘Emoluments allowances’, the word ‘privileges,’ be inserted.”

The amendment was adopted.

Shri H. V. Kamath : Sir, I have an amendment to amendment No. 616 which I handed in this morning. It was taken as moved.

Mr. President : Yes. I will put it to vote.

The question is:

“That for the word ‘except’ the words ‘other than’ be substituted and the two commit in entry 46 of List III, Seventh Schedule, be deleted.”

The amendment was negatived.

Shri H. V. Kamath : Bad punctuation, Sir.

Mr. President : The question is:

“That in entry 46 of List III of the Seventh Schedule, for the words ‘Other than-the Supreme Court’ the words ‘except the Supreme Court’ be substituted.”

The amendment was adopted.

Mr. President : Now we come to List VI. Amendment No. 618.

The question is:

“That for clause (5) of article 148, the following clause be substituted:—

‘(5) Subject to the provisions of this Constitution and of any law made by parliament, the conditions of service of persons serving in the Indian Audit and Accounts Department and the administrative powers of the Comptroller and Auditor-General that be such as may be prescribed by rules made by the President after consultation with the Comptroller and Auditor-General.’ “

The amendment was adopted.

Mr. President : The question is:

“That clause (g) of sub-paragraph (1) of paragraph 3 be omitted, and the remaining clauses, ‘(h), (i), (j) and (k)’ be relettered as ‘(g), (h), (i) and (j)’ respectively.”

The amendment was adopted.

Mr. President : Amendment No. 625. There is an amendment to this by Mr. Chaliha, No. 630. I will put it to vote.

The question is.

“That in amendment No. 621 of List VI, for the first three lines of the proposed sub-paragraph (4) of paragraph 4 of the Sixth Schedule, the following be substituted:—

‘(4) That the Governor shall make rules regulating—

The amendment was negatived.

Mr. President : The question is:

“That to paragraph 4, the following sub-paragraph be added—

- ‘(4) The Regional Council or the District Council, as the case may be, may with the previous approval of the Governor make rules regulating—
- (a) the constitution of village Councils and courts and the powers to be exercised by them under this paragraph;
 - (b) the procedure to be followed by village Councils or courts in the trial of suits and cases under sub-paragraph (1) of this paragraph;
 - (c) the procedure to be followed by the District or Regional Council or courts constituted by such Council in appeals and other proceedings under sub- paragraph (2) of this paragraph ;
 - (d) the enforcement of decisions and orders of such Councils and courts;
 - (e) all other ancillary matters for the carrying out of the provisions of sub-paragraphs (1) and (2) of this paragraph.’ ”

The amendment was adopted.

Mr. President : The question is:

“That in sub-paragraph (3) of paragraph 5, for the words ‘and the Governor may by rules prescribed the procedure to be followed at such trial’ the words and figure ‘to which the provisions of this paragraph or paragraph 4 apply’ be substituted.”

The amendment was adopted.

Mr. President : The question is:

“That in the proviso to sub-paragraph (2) of paragraph 20, for the words, brackets and letters ‘clauses (e), (f) and (g)’ the words, brackets and letters ‘clauses (e) and (f)’ be substituted.”

The amendment was adopted.

Mr. President : The question is:

“That in article 106, for the words ‘Constituent Assembly of India’ the words ‘Constituent Assembly of the Dominion of India’ be substituted.”

The amendment was adopted.

Mr. President : The question is:

“That in clause (3) of article 348 for the words ‘shall for the purposes of the said clause be deemed to be the authoritative text thereof’ the words ‘shall be deemed to be the authoritative text thereof in the English language under this article’ be substituted.”

The amendment was adopted.

Mr. President : I shall now put to the House Mr. T. T. Krishnamachari’s amendment.

The question is:

“For the word ‘minorities’ in Part XVI the words ‘certain classes’ be substituted.”

The amendment was adopted.

Mr. President : The question is:

“That in entry 67 of List I of the Seventh Schedule after the word ‘records’ the words ‘and archaeological sites and remains’ be inserted.”

The amendment was adopted.

Mr. President : There is a consequential amendment.

The question is:

“That in entry 40 of List III, Schedule VII after the words ‘and remains’ the words ‘other than those declared by Parliament by law to be of national importance’ be added.

The amendment was adopted.

Mr. President : I take it that the amendment relating to the name of Bengal which is substituted by West Bengal has been accepted. There is an amendment by Thakkar Bapa which I shall put to the House.

The question is:

“That in article 164 in the proviso shall be inserted ‘Provided that in the State of Madhya Bharat there shall be a minister in charge of tribal welfare, who may in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work.’”

The amendment was adopted.

Mr. President : Before we adjourn for the day we shall make some arrangement regarding the time table as to what we propose to do. I take it that we do not sit this afternoon. I want to know from Members how many of them would like to speak, so that I might fix an order as also the time. As regards sitting on Saturday next it is not possible for me to decide now. I shall decide it on Friday as to whether we shall sit on Saturday or not. As regards the sessions from day to day, what is the wish of the House?

Several Honourable Members : Five hours a day.

Prof. N. G. Ranga (Madras: General): One sitting from 2-30 to 6-30 P.M., so that we shall come only once.

Mr. President : What is the time limit for each speaker?

Shri K. M. Munshi : I suggest 15 minutes and five hours a day so that Members might get a few days between this and the next session.

Several Honourable Members : Half an hour.

Mr. President : As a compromise the time limit will be 20 minutes for each speaker.

The Honourable Dr. B. R. Ambedkar : All that we can do now is to decide whether we should sit tomorrow. In the meantime it would be desirable if you could invite Members who desire to speak to send in their names to you. After ascertaining the number of speakers who desire to take part in the general debate it will be possible for you to determine whether we should have two sessions a day and also as to the time limit for every speaker. At the moment nobody is in a position to know how many Members wish to speak. If the number of speakers are not too many it will be possible to increase the time for each Member and it will also be possible to have one session a day. I therefore suggest that you should only fix the meeting for tomorrow and in the meantime ask Members to indicate their wishes to you, so that you may have a list of speakers and then we can come to a decision as to other points, such as the time limit for each speaker and the number of the daily sessions, whether it should be one or two.

Mr. President : I think that is a practical suggestion.

Shri T. T. Krishnamachari : May I say, Sir, that we sit tomorrow as usual from ten to one and from three to five ?

Mr. President : For the present I decide that we meet tomorrow as usual at Ten of the Clock and I expect Members to send to the office by this evening their names if they wish to take part in the debate. That information will enable me to decide the hours of sitting, etc. I may say that it would be open to a Member not to participate in the debate even though he has given his name.

The House stands adjourned till Ten of the Clock tomorrow.

The Assembly then adjourned till Ten of the Clock on Thursday, the 17th November 1949.

CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 17th November 1949

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.

DRAFT CONSTITUTION—(*Contd.*) (*Third Reading*)

Mr. President : We shall now take up the third reading of the Constitution. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Mr. President, Sir, I move

“ That the Constitution as settled by the Assembly be passed.”

(*Cheers*)

Shri Mahavir Tyagi (United Provinces : General) : Congratulations.

Shri H. V. Kamath (C. P. & Berar : General) : Let Dr. Ambedkar kindly speak.

The Honourable Dr. B. R. Ambedkar : I propose to speak at the end. It is not the usual thing to speak now.

The Honourable Shri N. V. Gadgil (Bombay : General) : This question be now put. (*Laughter*).

Shri Mahavir Tyagi : What is the opinion of Dr. Ambedkar about this Constitution we are passing ?

Mr. President : I think we must now proceed with the business. Dr. Ambedkar has moved that the Constitution as settled by the Assembly be passed. The Motion is now open for discussion. Yesterday we were discussing the time that we would take for this Third Reading and I requested Members to give me names. Till yesterday evening I had received 71 names of Members who want to speak, and some additional names have come this morning; but even as it is, it seems to me that if we take about twenty minutes each and if we sit three days this week and five days next week, we shall have twenty-four hours, and twenty minutes for each speaker will give seventy-two speakers. So far as the time is concerned, I think we can very well manage within this time giving opportunities to every speaker who has expressed a desire to speak. So, it is not necessary to sit longer.

Shri H. V. Kamath : Let us sit for four hours.

Mr. President : At this rate we shall not require to sit, four hours.

Shri H. V. Kamath : If we sit four hours, we will be able to finish the session by next Thursday instead of Friday. If we finish earlier, we will have a longer interval before the session of the Legislature.

Dr. P. S. Deshmukh (C. P. & Berar : General) : Some honourable Members may come here later and give their names hereafter.

Mr. President : They may come. We have got some other work also to attend to. Today and tomorrow at any rate or till the end of this week, we sit only for three hours, and if necessary and if we find that sufficient progress is not made, we may have a second session next week.

Shri L. Krishnaswami Bharathi (Madras : General) : Is it from ten to one?

Mr. President : Yes.

Shri L. Krishnaswami Bharathi : We are quite agreeable.

Mr. President : Now, I do not know in what order I should call Members. I suppose I must follow the usual practice. If Members stand in their places, I shall select one of them.

Shri H. J. Khandekar (C. P. & Berar : General) : They should be called alphabetically

Mr. President : I think that would be too mechanical. I shall follow the usual procedure and I hope there will be no difficulty in that. Shri Muniswamy Pillay.

Shri V. I. Muniswamy Pillay (Madras: General): Mr. President, Sir, I stand before this august Assembly to support the Motion moved by my honourable Friend, Dr. Ambedkar. Sir, I will be failing in my duty if I do not refer to the magnanimous way in which you have conducted the proceedings of this august Assembly in preparing the Constitution of this great land of ours. Sir, as one of the signatories of the epoch-making Poona Pact, you will be happy today that we have opened a new chapter in the history of India by giving equal opportunities to all classes and sections of the people who inhabit India. Sir, Mahatma Gandhi laid the seed for the amelioration of the condition of the Depressed Classes and that took shape in a formidable way and today we find ourselves in the company of men who have thought it necessary to afford facilities for the common man in our great country.

Sir, I proceed now to appreciate the great services that have been rendered by the Drafting Committee whose services are so valuable to us; they have not spared days and nights in coming to decisions on important articles. I must say a word of praise to the caliber and capacity of the Chairman of the Drafting Committee—Dr. B. R. Ambedkar. (*Loud cheers.*) Coming as I do from a community that has produced Dr. Ambedkar, I feel proud that his capacity has now been recognized, not only by the Harijans but by all communities that inhabit India. The Scheduled Castes have produced a great Nandanar a great devotee, a Tirupazanalwar a great Vaishnavite saint, and above all a Tiruvalluvar, the great philosopher whose name and fame is not only known throughout the length and breadth of India but of the whole world.

To that galaxy of great men of Harijans now we have to add Dr. Ambedkar who as a man has been able to show to the world that, the Scheduled Castes are no less important but they can rise to heights and give to the world their great services. I know, Sir, that he has served the community of the Harijans and also of India by his great service and sacrifice in preparing a Constitution which will be the order of the day from the 26th of January 1950 and I also feel, Sir, of the Chief Draftsman and of the staff that have worked in preparing the Constitution cannot be litted; they equally receive our praise.

Now coming to the Constitution itself, Sir, I feel proud that our countrymen have thought it necessary that the Fundamental Rights should give no discrimination, to any man who is considered to be lower in the rank and file of the nation. Articles 15 and 16 go to give no discrimination; at the same time they give equal opportunities of employment. I specially welcome these provisions.

The great thing that this Constitution brings to notice, not only to this country but to the whole world is the abolition of untouchability. The fair name of India was a slur and a blot by having untouchability, Great *avathars* and great saints tried their level best to abolish untouchability but it is given to this august Assembly and the new Constitution to say in loud terms that no more untouchability shall stay in our country.

Again, article 29 gives power to the would be Government throwing open all Hindu religious institutions to all classes and sections of Hindus. At one time

dogs and swine might enter the sacred precincts of temples but the shadow of an untouchable was considered a great abomination. I feel proud, Sir, that by this article that slur has been removed away. Due to this discrimination of not allowing a certain section of Hindus, my people have been converted to various faiths and thereby our population has dwindled as also their merit, but today I am proud that under article 29 not only all Hindu religious institutions have been thrown open to all classes and sections of Hindus but all educational institutions maintained by the State or are receiving aid from Government will be thrown open to all the sections of the people.

Another thing, Sir, is that Mahatma Gandhi has told in unequivocal terms that prohibition must be the order of the day. We declare that if he were to be a dictator for even one day he would have proclaimed prohibition for the whole of India. Article 47 rightly puts in the Constitution that there shall be prohibition through the length and breadth of India. Article 46 gives the Scheduled Castes and Scheduled Tribes a very important place and I welcome that. Another article, 48, deals with the preservation of much cow and prohibition of cow slaughter. As a Hindu I feel that the great value of a cow is felt in India and it is a religious sentiment that the cow must be preserved and I feel happy that an article has been brought in this Constitution. Under article 343 we have been able to agree for a common official language for the whole of India. Fifteen years has been set as the target period by which India must get into the common language, but coming as I do from a non-Hindi area, my community especially have not the occasion or the opportunity to train themselves in the language of Hindi. Whatever it may be, the future Government that will come to stay will think over this matter and see that, if a great section of the non-Hindi area or population have not developed to that state to take up Hindi, they will see that some more time is given.

Coming to article 74 which allows the choice of ministers, I am one of those, Sir, who believe in the political rights of a community. During the past years when the Act of 1935 was in force there was a convention that the unrepresented communities must be given a choice to be ministers but that has been taken away from here but I am sure the people who will be in charge in Future will see that the unrepresented communities in the ministries are given a chance so that the backwardness of such communities may be removed and they may keep an equal status with others. Coming to article 81 I find that in the composition of the Peoples Assembly no reservation has been given. When I questioned this matter in this august Assembly, the Chairman of the Drafting Committee told us that the Minorities Advisory Committee have not made any special recommendation as to this matter, but I am sure the President who will be responsible for getting the composition of the provisional Parliament will find ways and means later whereby a certain reservation may be got for these people.

Sir, I am proud that the Drafting Committee have understood the views of the members of the Scheduled Castes and others and have brought in articles 320 and 335 which deal with the representation of Scheduled Castes in the services. I feel it very important that a community that was at the outskirts of the society for centuries must be given a place and I think these articles go a long way to protect the interests of the Scheduled Castes in the matter of representation in the services.

Another important factor in the Draft Constitution is the giving of adult franchise in India. This will open the door to all the adults in this country, especially to the Scheduled Castes, who form one-sixth of the population of India, to equal opportunity to send proper representatives to the various assemblies. My only fear is, whether these people who have not yet been duly educated will be able to exercise their vote intelligently and send proper representatives. But, I am sure that with the help and assistance of the various communities in India, they will be able to send their proper representatives in the various assemblies.

[Shri V. I. Muniswamy Pillay]

Sir, in the matter of reservation of seats for the Scheduled Castes in the provincial assemblies, it was necessary to put a time limit of ten years. Though I pleaded before the Advisory Committee that there should be no time limit, due to the most crucial times and due to, the demise of Mahatma Gandhi, the whole country was not in a mood to give any reservation to any section. It is due to this and to the generosity of Sardar Patel: who so ably conducted the meetings of the Minorities Advisory Committee that, we have agreed to a time limit of ten years and also to the appointment of a Special Officer to see to the needs of the Harijan community and the Scheduled Tribes. If in that period we have developed properly, we will not hesitate to remove the time limit; but if it is found that these people have not risen up to the level of the other communities, it is my humble belief that the future parliamentarians and the Government will see that the time limit is extended.

Sir, another important thing is that a definition has been given of Scheduled Castes and scheduled Tribes. Before the Provincial Parliament comes into effect, it is said that the President by a declaration will say which are the communities that come under the category of Scheduled Castes and Scheduled Tribes. It has come to my knowledge and of other members of my community that some people have been playing to eliminate some of the communities that really come under the category of Scheduled Castes. I think, Sir, proper care will be taken to see that no community that comes under the category of Scheduled Castes is eliminated.

The great thing in this Constitution, that is before the House, is that the word 'minorities' has been removed. I know, as a matter of fact, it is not the desire of myself or of my community to be ever called a minority or Scheduled Castes, we want to merge with the thirty crores of people in this country. But, as Mahatma Gandhi rightly said, it is the change of heart that is required. If the caste Hindus and those people who predominate in this country only show that change of heart, it will be time, Sir, that we ourselves merge into the great community of Indians and I do not want to perpetuate this seclusion for ever.

In conclusion, I may, on behalf of the members of the Harijans that are present in this House and of Harijans outside, assure you and the august Assembly and the Government that we Harijans.

Shri K. Hanumanthaiya (Mysore State) : Do we not represent the Harijans ?

Shri V. I. Muniswamy Pillay : We come under the special label of Harijans. On behalf of the Harijans, I may assure you and the future Government of India that the Harijans to the last man will uphold the Constitution that has been passed by the Constituent Assembly and work it to the very letter and spirit.

I thank you, Sir.

Seth Govind Das (C. P. & Berar : General) : *[Mr. President, I am very happy today on seeing that the third reading of the Constitution, completed by us in about three years, has now begun. On this occasion, I would at first like to congratulate Dr. Ambedkar who has laboured hard to put this Constitution into proper shape. Today he has moved the Motion that the Constitution as settled by the Assembly be passed. It has been said about Dr. Ambedkar that he is the Manu of the present age. Whatever be the truth of that statement, I can say that Dr. Ambedkar was quite equal to the task of constitution making that had been entrusted to him

I feel, Sir, that another person who deserves our sincere thanks and gratitude in this connection is our Prime Minister, Pandit Jawaharlal Nehru. It was he who for the first time brought forward before this Constituent Assembly that Objectives Resolution which can be said to be the foundation stone of this Constitution.]

*[] Translation of Hindustani speech.

Shri Rohini Kumar Chaudhury (Assam : General) : On a point of information; in describing Dr. Ambedkar as Manu, was the honourable Member referring to the Hindu Code ?

Seth Govind Das : * [No, Sir, that statement did not have any reference to the Hindu Code, I believe that the House is aware that I am opposed to many of the provisions of the Hindu Code.

So I may remind the House of that Resolution which was moved in this Assembly by Pandit Jawaharlal Nehru in the beginning and, which as I have just said, is the foundation stone of our present Constitution.

The third honourable Member who deserves our congratulations is Sardar Vallabhbhai Patel, who has merged together into unions the numerous States, which had kept our country divided into many fragments.

Thus while supporting this Motion today, I congratulate these three honourable Members.

Our country is one of the six oldest countries of the world, which are India, China, Egypt, Greece, Babylon and Mesopotamia. In so far as Babylon and Mesopotamia are concerned, they do not occupy today any position of importance in the world. If we look at Greece, we find that the ancient Greece can be seen only in its ruins. The culture and civilisation of ancient Greece is not accepted in the Greece of the present day. Christian Culture and civilisation is now dominant there. In so far as Egypt is concerned, its ancient culture and civilisation is found only in its Pyramids. If one goes to Egypt today, he would hardly find there the ancient culture and civilisation of Egypt. Today the Muslim culture and civilisation are there. In so far as China is concerned we can see a little of the Culture and civilisation of India of the Buddhist age combined in its after effects. But there too we find mostly the effect of the modern age. In this way in five out of these six ancient countries, we do not find their ancient cultures. Only India is one of those six ancient countries where the tradition of its ancient culture and civilisation can be 'seen in a very field of life.

If there be any one here who desires that the India of Rigveda should exist again today in our country, such a one cherishes but a forlorn hope, a hope which can never be fulfilled. Nor do I consider it proper that such a hope should be entertained. I do not, think any one of us can transform the India of today into the India of Rigvedic times; but while I hold this view, I would like to make it clear at the same time that the civilisation and culture, which is the heritage of our early history and the continuity and vitality of which are visible in all spheres of our society and life and for the maintenance of which in our age Mahatma Gandhi—the Father of our Nation—sought to promote in many a way, should not be rejected by us. We should adopt all that the modern world has to give to us to fulfill our needs, as also all the inventions of the modern science. We need not have contempt for things European or American. We should be ready to assimilate all the new ideas which are useful to our country. Modern India should be so built up that we may be able to retain our culture and civilisation as well as also the advantages of the modern age. If we look at our Constitution from this view point, we would discover many shortcomings in it. Many people think that the present Constitution is an enlarged volume of the Government of India Act, 1935. From the view-point I have already placed before you, we may find some shortcomings but I am not prepared to accept that it is an enlarged edition of the Government of India Act, 1935. It was necessary that some sections of the Government of India Act should be kept in it. We find many articles of the Constitutions of other countries e.g., Ireland, Canada, and America also to have been drawn upon. And then, it is not a fact that this Constitution does not possess any originality. There is enough of originality in this Constitution. Of course, I am prepared to accept that this

* [] Translation of Hindustani speech.

[Seth Govind Das]

Constitution is not entirely satisfactory. Some people hold that this Constitution has become too bulky, it contains too many articles as also many details which could well have been left out. But I differ from them. If the Constitution is lengthy and if somethings have been given in detail that fact by itself should not make us dissatisfied with it, as these details will guide our Parliament in many a way. I feel that on the contrary we should be satisfied that this Constitution contains many articles and many details.

One thing that troubles me, however, and which I am afraid would continue to cause uneasiness to me, is that the Constitution of this ancient country has been framed in a foreign language even after the attainment of independence. I have always been drawing your attention to this shortcoming. You had assured us, not once, but more than once, that you also desired that our Constitution should be in our national language. In my opinion we would have definitely succeeded in this task if we had made an attempt. We have been sitting here for three years to pass this English draft. I think it would not have been either impossible or even inconvenient to have set for one month more and passed the Hindi constitution. I wish to say that our passing the Constitution in a foreign language after the end of our slavery and attainment of independence would for ever remain a blot on us. This is a badge of slavery a sign of slavery. You may publish the translation by the 26th January, still, I would say frankly that a translation will after all remain a translation. The translation cannot replace the original and whenever a constitutional difficulty arises, whenever any constitutional point arises before our Supreme Court, High Court or any other Court, we would have before us a Constitution in a foreign language and therefore I feel the domination of that foreign language. This will always hurt us and I am thinking of the day, dreaming of the day when our country will form another Constituent Assembly and that Constituent Assembly will place our original Constitution before us in our national language.

Now, if we look at our Constitution our attention is attracted towards the Adi Vakya, called Preamble in English. As I have just said Pandit Jawaharlal Nehru's motion, is the foundation stone of the Constitution similarly the preamble, the Adi Vakya contains the whole gist of the Constitution.

In this preamble we have made it clear that we will have a democratic government in our country. There were only two ways open to us. Either we could frame a democratic constitution or advance towards despotism and frame a type of constitution which would have in essence meant the establishment of despotism in this country. We have made it clear in this preamble, in this Adi Vakya, that our Government would be a democratic one. Further, I would also invite your attention to the four points in this preamble, which are justice. liberty. equality and fraternity. Justice has been quite rightly given the first place. In our country justice has always been given the first place. If we look at our past history, the traditions of that history we would come to know that justice has always got the first place in this country. It has been said

Swasti Prajabhyah Paripalayantam

Nyayana Margana Mahim Mahishah.

That is, 'the ruler should protect, nourish and cherish his subjects in accordance with justice.' So, it is quite proper that justice has been given the first place in the Preamble after the declaration of democracy. After that the next place has been given to liberty. All is of no worth without liberty. If our liberty is gone, every thing is gone. We have gained every thing by attaining liberty. Goswami Tulsidas has said in Ramayan :

Pradhin Sapanaihu Sukh Nahi

(one who is dependent on others cannot be happy even in dreams.)

This sentence of the Goswami will always retain its importance even though it has become so common. Thus the second place given to liberty in this preamble is quite proper. After this the third place has been given to equality. No country can be happy wherein on the one hand, one per cent, of the people live in big palaces, eat a variety of dishes, put on covers like Pashmina in winter and the finest raiment in summer, while on the other 99 per cent of the people do not even get tents to live in, do not get even dry bread to eat, do not get clothes, so much so that their womenfolk do not get clothes to cover their body, that country must inevitably face a revolution. Hence 'equality' must rightly get a place in this preamble. The fourth place has been given to fraternity. No social structure can beget happiness without mutual love. So I hope that our country would be ruled according to the Preamble of this Constitution.'

So far as the various articles of this Constitution are concerned, I would make a few remarks regarding only three of them. One is regarding the name of the country. In this Constitution, our country has been named 'India that is Bharat'. It is a matter of gratification that the name Bharat has been adopted, but the way in which this has been put there has not given us full satisfaction. 'India that is Bharat' is a strange name. The second article, which I wish to refer to, is regarding cow protection. It is a matter of satisfaction that an article regarding 'cow protection' has been added in this Constitution. But just as we have provided in the Fundamental Rights, that 'untouchability is a crime'. Similarly we should have said, 'cow killing is a crime'. This we could not see our way to do. The third article concerns our language. We are not fully satisfied with this article too. English will prevail in this country for another fifteen years, and the Nagri script has also been disfigured by introduction of English numerals in it. The Hindi-speaking people are very much disgusted at this.

So I would say that we are not fully satisfied with the three things which I have been emphasising from the very beginning. But the fact that these three things have found place in this Constitution is a matter of gratification.

In conclusion, I again congratulate Doctor Ambedkar, Pandit Jawaharlal Nehru, Sardar Vallabhbhai Patel, other members of the Drafting Committee, and you, Mr. President along with the whole Constituent Assembly, on having framed a Constitution of free India, a Constitution of which we and the whole country can feel proud.]

Shri Lakshminarayan Sahu (Orissa : General) : *[Mr. President, now that the Draft Constitution is under final review I must take the opportunity of making a few observations. Firstly, I feel that in framing the Constitution, we have deviated from the ideals we had set for it. The ideals on which this Draft Constitution is framed have no manifest relation to the fundamental spirit of India. This is what I think my Friend Seth Govind Das also made clear in his speech. It is the opinion of many people that we should not have drawn upon so heavily on the Government of India Act for preparing the draft of this Constitution. I feel that this Constitution has become a queer and unwholesome amalgam on account of the varied provisions it has borrowed from the Government of India Act and the other Constitutions of the world, things that cannot be compounded to form a harmonious whole.

It may be that this mixture may be to the taste of such people as are found of such mixed drinks as cocktails or such mixed food as Khichri. But while such mixtures may be enjoyable on occasions I can assure you that this cannot become staple food of any one and this Constitution made as it is for regulating our daily life, would not prove suitable and would break down soon after being brought into operation.

*[] Translation of Hindustani speech.

[Shri Lakshminarayan Sahu]

When at first we had started the work of framing the Constitution, our idea was to make India a Federal State with provinces as autonomous units. But gradually we gave up that line and as is evident from the present Draft Constitution the units have been practically robbed of all powers. This document, I would say, appears to be based on a lack of faith in the Provinces.

Confidence begets confidence, but contrary to this maxim Constitution does not place any confidence in the units. The provinces have been so tightly chained to the centre that none of them can have the least feeling of freedom. I am afraid that the provinces may on this Constitution coming into force feel that they have been put under a new kind of slavery.

Even though I sincerely compliment and congratulate Dr. Ambedkar for the hard labour he has put in this connection, yet I am afraid I cannot compliment him for this unnatural product of this labour which under constant changes has almost become shapeless and ludicrous. I know fully well and I believe that he is likely to say in reply that it is not entirely his handiwork. He had to frame the Constitution in accordance with the wishes of the majority party in the country. But be it as it may, I can predict that after two or three years a fresh Constitution will have to be framed again. During the early sittings of the Assembly when the objectives Resolution was placed before the House, the Hon'ble Pandit Jawaharlal Nehru had most spiritedly spoken of our 'Sovereign Independent Republic', but later on a new term 'Democratic Republic' crept in its place. Formerly Pandit Nehru had said that to remain in Commonwealth would be a disgrace to us and that as soon as we were free we would get out of the Commonwealth. But I find that even today we are clinging to the apron strings of the Commonwealth. All this appears to me as if we were seeking to put our ship into motion without lifting its anchor. I may however point out that the ship does not move and shall never move. I fail to see any logic or significance in this course of action. It can not be pretended that it is a policy full of daring. It may be that our hearts have not the courage nor our minds the vision which alone could enable to frame a Constitution suited to our genius and needs. It appears to me that our eyes have been turned towards the West for finding out the ways the world manages its affairs in order that we may copy their methods. Even now Pt. Jawaharlal Nehru often declares that the Constitution we adopt would be such as to make the whole world look to us for Constitutional wisdom, and as would draw the world very near to us. But I often wonder why this should be so and why the world should look to India for guidance. What special appeal after all, does India possess? Besides what does this Constitution as shall compel attention on the part of the world to its provisions? Even the spinning wheel which stood for the basic ideals of the Indian people and which was the object of such deep care for Mahatma Gandhi has been discarded by you and has been replaced by chakra. Formerly it had been decided that the Constitution would contain some provisions regarding our National anthem—Bande Mataram or Jan Gan Man. But we find that no provision relating to National anthem has been included in it. After all what is there in the Constitution to be proud of? My honourable Friend Seth Govind Das had suggested that cow slaughter should be abolished. It must be abolished at once. But you have provided for gradual abolition.

The article which states that this work will be done gradually does not state in clear words that cow-slaughter is being prohibited with immediate effect. Why is it not being prohibited? Are we afraid of anything in this connection? How can we then give place to any other social order, such as the socialistic order, in this constitution? On the one hand we give opportunity for private profit and on the other say that the resources of the Government are limited. That is why prohibition is not introduced and the people drink. The people will go on drinking so long as we do not make up our minds regarding our future

course of action. So long as we were not prepared internally to follow our ideals, how can we make others follow them ? Therefore we should give full thought to these matters. Are we not going to introduce the charkha which is the 'reflection' of India ?]

Shri H. V. Kamath : *[Symbol.]

Shri Lakshminarayan Sahu : *[Symbol. Yes 'symbol' is the right word. Moreover we have not decided anything in regard to our national song and our national flag. After all what is all this ? Where has everything disappeared ? Regarding Prohibition it is said that it should be introduced gradually. But what about the principles of Mahatma Gandhi? A friend has remarked just now that if he were a dictator even for a day, he would introduce complete prohibition. We say that we should proceed gradually and that we should forsake the habit of drinking too gradually. Green Bars and Blue Bars have been opened in our province of Orissa. When prohibition is going to be introduced, why are these bars opened ? Recently Blue Bars and Green Bars were opened in Cuttack. Moreover, I would like to say that we should again consider whether we should stay in the commonwealth and whether we should not establish a socialistic order. The position at present is that special privileges are being granted to the Anglo Indians. I do not understand why special privileges are granted to people. The Anglo-Indian community has been enjoying such privileges in the railways and elsewhere as cannot be granted to others even though they may be equally efficient. That is the reason, I would like to point out, why we do not have the necessary facilities in the railways. Our country was first named Bharat. Then it was thought that 'Bharat' would not be understood by other countries of the world and the words 'India that is Bharat' were included. What is this ? There is no mention of the national language. On the contrary it has been written that Hindi would be the official language and English would also continue. The position would be reviewed after five years and then after fifteen years. This is the form which our constitution has assumed. I think that it is altogether useless and worthless. 'I do not see anything substantial in it. Mr. Kamath has quietly introduced in it God too. Some people hold that there is no God. The people of India do not want 'God'. We should be clear about this that we shall accept the majority decisions. I see that we step forward hesitatingly and that is why this constitution has assumed a shape which does not reflect a clear picture of India. This Constitution could have been corrected and made more explicit. However, this is not the occasion for it and I know that all this will never be done. Just see what has been done in the case of civil liberties. They have been so much fettered that even the civil liberties enjoyed by the people during the British regime would be available to them no more. Many people are confined in Jails for years. We have got such civil liberties.]

Shri R. K. Sidhwa : (C. P. & Berar: General) : *[What civil liberties we had during the British regime ?]

Shri Lakshminarayan Sahu : *[Many more. You will see that on the enforcement of this Constitution very few civil liberties will remain. India is a country of villages. In complete disregard of the villages we have turned into citizens and ask for rights of citizenship. I would say that we should have 'village-zen-ship' rights also. I do not see 'village-zen-ship' rights anywhere in this Constitution. What is the step that we should take at the present moment ? We should revive the cottage industries. But the idea never occurs to us. When a few people make a hue and cry about a thing it is said that it may also be included. When we say that we want to shape a new world and that India will be a non-violent country and an ideal for others to follow, why do we say in the same breath that we cannot take up the question of capital punishment. I cannot understand what is in our minds. After all what is the reason for this

*[] Translation of Hindustani Speech.

[Shri Lakshminarayan Sahu]

inaction. We speak fluently but do not bother ourselves about practice at all. We imitate the turns and twists of the other countries of the world. All this has caused me great sorrow. What is after all this Constitution about ? What has become of the proposed elected Governors ? We had decided that we would have elected Governors, the question was reopened and provision was made for appointed Governors. All this is being done in the strength of the so-called majority. We are seeing that our country is becoming as lifeless as stone. There is no talk of decentralisation now. We had set before us the object of decentralising India and of setting everything in order. But there has been so much centralisation that there is only one centre now and the Units have been reduced to the position of Municipalities and District Boards. A weak Unit has no other prospect than of perishing. The powerful Units will receive encouragement from the Centre and make progress. The bigger Units like that of Bombay, Madras and U. P. will get facilities and money too and will make progress. It is no doubt true that there is a provision that every Unit which has deficit will receive capital allotment from the consolidated fund. But who will grant it ? The persons from greater States like Madras and Bombay, who would be in charge of the consolidated fund would consider so many things and then grant it. They will throttle Assam and Utkal. We would become slaves. I have seen for the last two or three years what facilities have been granted to Utkal. That is why I say that this Constitution is not to our liking.]

Shri K. Hanumanthaiya : Mr. President, Sir, it is now nearly three years since this Assembly first met for hammering out a Constitution. We are nearly at the end of our labours. This is a day on which the Assembly in general and the Drafting Committee in particular deserve congratulations on having completed the task entrusted to them under very difficult circumstances.

Today after having had a full picture of the Constitution. I for one feel that I cannot make up my mind wholly to appreciate and welcome this Constitution. There are very good points in it—the principles of liberty, equality and fraternity are embodied in this Constitution no doubt, and that is a matter for congratulation. But, Sir, there are other features of the Constitution that may not come up to the expectation of many people. It resolves itself into a question as to who is responsible for this constitutional set-up.

When I look into the list of members of the Drafting Committee, and see their names, I must say that many of them are very respected names. Many of them are very able men. But only some of them were in sympathy with the freedom movement. Most of them, if I scrutinize the names of members of the Drafting Committee, I find were the people who were not with the freedom movement in the sense in which many of our leaders were. They naturally brought their outlook and knowledge of things into the constitution making. That was not the kind of psychology or the knowledge that the Congress, for instance, or the country needed. I submit with all humility, they were no doubt very learned in the several laws and rules that were framed before we got independence. They were very well versed in case law and code law. But that was not sufficient for the purpose of hammering out a Constitution for a great country like India and its future. It is, something like this: we wanted the music of *Veena* or *Sitar*, but here we have the music of an English band. That was because our constitution makers were educated that way. I do not blame them rather, I would blame those people, or those of us, who entrusted them with this kind of work.

Look at the way the structure of the Constitution is built up. We were during the days of freedom struggle, wedded to certain principles and ideologies as taught to us and as propounded to us by Mahatma Gandhi. The first and foremost advice which he gave in his picturesque language was that the constitutional structure of this country ought to be broad-based and pyramid-like. It should be built from the bottom and should taper right up to the top. What

has been done is just the reverse. The pyramid has been reversed. The initiative from the Provinces and States and from the people has been taken away and all power has been concentrated in the Centre. That is exactly the kind of Constitution Mahatma Gandhi did not want and did not envisage. Whether or not we are, right in having discarded our faith in this kind of democratic constitution, whether or not we are right in having discarded Gandhiji's idea of constitution making, it is too soon for us to judge. The future will judge for itself.

Sir, there are some very interesting contradictions in this Constitution. Here we have a Republic with a King above and Rajpramukhs below. Here is a Constitution which we say is a Federal Constitution but which in essence is almost a unitary Constitution. Here is a Constitution which we call Democratic, but democracy is centered in Delhi and it is not allowed to work in the same sense and spirit in the rest of the country. It is like the famous Hindu view of things that if you are to go to Heaven then you should have to go and have a dip in the river Ganges, especially at Benares. Nowhere else is the country so fit and so sacred as to send people to Heaven. Some thing of the kind has taken place in this Constitution-making. If you are to find democracy congenial to the soil, or if democracy is to be worked, it is in Delhi and nowhere else. That is the spirit with which this Constitution is framed. Again the people who have had a hand in Constitution-framing here have not only looked at the people in the Provinces and States with a certain amount of suspicion but they have also looked at the future with suspicion. They have made all sorts of provisions for preventing, what they probably think is the misbehaviour on the part of the people for generations to come. That was not the intention with which we started Constitution-making. Anyway, inevitably the tendency has been allowed to develop that way.

There is again this language question on which some of my predecessors have spoken. We no doubt wanted the Constitution to be in our own language but we are compelled to keep the foreign language in use. That is again another interesting contradiction. These contradictions in my view are not of a very serious nature. The King above and the Rajpramukhs below will not be able to harm the Republic that we have set up. They are almost powerless in the set-up we are now adopting.

Though our constitution-makers have not adopted the course of decentralisation, still I have faith in the people of India. They will be able to assert themselves in times to come and make this democracy work equitably from Cape Comorin to the Himalayas. Whatever may be the set of rules, whatever may be the set of articles that we might draw up, human mind and human energy are greater factors in life and I have got full faith that they will be able to rectify matters in times to come.

Some of my friends naturally feel aggrieved that the Constitution has not been drafted in Hindi and that the national language has not been straight away adopted. That again is due to the limitation of the circumstances and the times that we are living in. If some of us have not been educated in Hindi ever since our childhood, it is not our fault. It is the fault of the situation that existed then. We learnt English, therefore we are fond of English. A day will come when people will learn Hindi and they will be equally fond of Hindi. All that is required is a certain amount of patience, certain amount of charity, a certain amount of tolerance, and I am glad to say that people who are wedded very fanatically to Hindi are prepared to give that amount of tolerance and charity.

I happen to come from a State and I would be doing an injustice to myself if I do not express my innermost thoughts. Whatever may be the reason for including article 371 in the Constitution, I am not very happy about it.

[Shri K. Hanumanthaiya]

I almost feel that we are treated in a way that is not in keeping with our self respect and I feel that generations to come will wonder why we the people of the States at all accepted or were willing parties to this article 371. It may be, that no doubt certain Governments or certain political leaders in the States have not come up to the expectations of our great leaders, and that has to be taken into consideration as well. But I would far rather stand by the principle that democracy is its own corrective. If democracy goes wrong in any particular area in the country it is not safe or wise that somebody from outside should always have the responsibility to rectify matters. That will not work. It may be that so long as our great leader Sardar Patel is there he may be able to rectify matters. But here we are framing a constitution not for a generation, not even for a century but for centuries unnumbered, and can we guarantee that there will always be at the head of affairs a man of the care of Sardar Patel to go on rectifying matters ? And mind, you, it is not the constitutional authority with which Sardar is now endowed that will rectify matters but it is his personal prestige. Personal prestige cannot be given as a gift by constitutional rules or precedents. Therefore, I would have appreciated. I would have thanked this House and those responsible for this article. if they had believed in the principle that democracy is its own corrective, and left it to the people of the area to pull up any Ministry or any Legislature or any particular Minister if they misbehaved. Not only is this article 371 against the canons of true democratic principles but ultimately it may be the cause of friction and many constitutional fights as well. There is a relieving feature that its duration is only ten years. But even for those ten years we are under the shadow of what is called "misbehaviour". That is a matter that has gone into the marrow of our bones. I hope that occasions will not arise when this article has to be exercised. If I may say so, it is also the responsibility of the people of the States to conduct themselves in such a manner that article 371 will ultimately prove a superfluity.

Sir, the Constitution that we have drafted is of a peculiar type. We students of Constitutional history and law were familiar with two types of constitutions; the federal one and the unitary one. Here is a Constitution which cannot be strictly classed under either of these two heads. It is almost of a new type and I may call it instead of a federal Constitution or a unitary constitution, a "Union Constitution". It bids to be a new phraseology that is contributed to constitutional thought by this Assembly. Whether this kind of constitution will prove as much of a success as federal constitutions, it is for the future to judge. But this is a new type of Constitution altogether and we have to work it with that spirit. After all, people say whatever the rules or the articles, the success of them depends not upon themselves but upon the people who work them. It is that faith that is sustaining us, not the faith that is generated by this Constitution. It is my hope that the people of India and their representatives will be able to work this Constitution with all its disadvantages and drawbacks to the best interests of the country.

Prof. K. T. Shah (Bihar : General) : Mr. President, Sir, at this stage of the debate on the Constitution. I feel it necessary to point out certain defects of" commissions and omissions, on which, at the appropriate stage. I had tried to suggest amendments; but as those amendments, almost every one of them, found no favour in the eyes of the draftsmen, I feel, at this last stage, when we have an opportunity of pointing them out, that I should voice them in appropriate form.

Sir, as the House would recollect, my amendments had not been of the nature of verbal alterations, or suggesting points of mere formal controversies. This is not to say that I do not recognise the beauty of form, or the value of precision in expression. In fact I am bound to say that the labours of Friends,

like Mr. Naziruddin Ahmad, who has striven hard to bring out the appropriate, the exact, expression, and proper punctuation; and make in all respects as correct a form as we could present, have not met with the appreciation that they deserved. While saying this I would not like it to be understood that I, on my side, do not appreciate the hard work, the deep learning, and all the careful attention they could possibly give that the Drafting Committee with its Chairman leading and some other members of that Body have rendered in this case. While judged as a piece of art in drafting, I am afraid I cannot regard this draft as a gem of its kind, I am willing to admit that, within the circumstances and under the conditions under which they had to work, the Drafting Committee have shown, and the Chairman particularly of that Committee, an erudition, a knowledge and ability to adapt himself to changing circumstances, and new conditions, and present as good a draft as, under the circumstances they could. For that they deserve every appreciation this House and the Government can show.

Having admitted this, I feel myself at liberty to point out still the defects, both of form and of principle, which, in my opinion, mar this Constitution and do not make it what we had hoped it would be. As already stated, I have tried to make my amendments and suggestions of principle and of root, rather than of mere superficial alterations. Now, confining myself only to those, I would like to point out, for instance, that the promise held out in the Preamble, -the promise held out in the very first Resolution of this House, has not been fulfilled to the degree and in the manner we had a right to expect. We claim, for instance, to be a sovereign, independent Republic. While, however, we continue to be Members of the British Commonwealth. I am afraid it would lie impossible for us to exercise that sovereign independence which we fancied we were acquiring and enshrining in this Constitution.

It may be that the Constitution is, in intent and form, democratic. But the ideal of Democracy in the shape of the Government of the *people*, by the *people* and for the *people*, is far from being realised if one scrutinises carefully the various Articles of this Constitution.

Several suggestions had been brought forward at the proper moment regarding, for instance, the right to consult the people by means of a Referendum. or the power of the people to initiate radical legislation to make the Constitution really democratic. But they have been all negated. The excuse has been given that we are not yet ready for such methods of working democracy in all its fullness. We would need, we were told, greater experience, better education, and more wide-spread consciousness of political power in the masses as well as its responsibilities, to be able to work with success such radical forms of democratic government. I am afraid, Sir, I cannot quite accept and endorse such a view of our people's capacity, or of a working democracy in this country. The ability to work a democracy comes by having the responsibility to do so, and not by paper professions in its name, and practical negation of its forms. Had we agreed to such arguments in the past, had we accepted the suggestion of the British that the people of India were not educated enough and aware enough of their rights and obligations to be able to work a democratic Government of their own, we should never even now have obtained our independence, and the right to self-government which is now our proud possession.

Because you are still unable to trust in full the people; because you are still unable to realise that it is only by working a democracy that democracy will really be established in this country, you have not accepted those suggestions and those amendments of mine which wanted such weapons, such instruments and devices to be introduced in the Constitution, whereby the right action by the will of the people for the benefit of the people and through the representatives of the people could have been asserted.

[Prof. K. T. Shah]

It is not only that you are lacking in a proper faith in the people as a whole. It is perhaps even more true to say that you are lacking in faith in your own leadership. For, if your leadership is really popular; if your leadership is really the open expression of the subconscious feeling the hopes and aspirations of the people, then you need not doubt at all that the leaders' guidance in crucial moments will be accepted; and the device I have suggested will be fruitful rather than mischievous.

I hold, therefore, that this Constitution is not, in the fullness of the sense, a real, working, effective democracy that the people of India had been led to expect they have achieved.

Take, again, the instance in which those of us who had entertained ideals of freedom have felt themselves disappointed by the actual wording in this Constitution. I mean the Chapters like those dealing with the Fundamental Rights and Civil Liberties, or the Directives of Social Policy, are not what they well might have been. I am afraid the wording of those articles gives much more verbal promise, than holds out any hope for actual performance. Almost in every case, in every article, in every clause, and in every sentence of each clause, the Right is given conferred or declared either restricted, conditioned, or made dependent upon certain contingencies that may or may not happen. There is nothing to show in the entire Constitution that efforts will be made to see that those Rights and Liberties are not merely paper rights, but that they will be made real, actual, living possession and enjoyment of the people.

Take these illustrations, Sir, The Right to free and compulsory education, the Right to full employment, or the Right to personal freedom, are in almost every instance made subject to restrictions and conditions that I had hoped will not occur in a Constitution we are claiming to be democratic, claiming to be popular, and claiming to be made by the chosen representatives and trusted leaders of the people of India. It is a pity, Sir, it is a great pity, that even such a simple right as the right to personal freedom has been made, under the Emergency provisions,- wholly illusory. Excuses can also be found for seeking to detain a person without trial for three months. It is therefore, not a right to personal freedom, so much as it is a right to remain under detention without trial, without any proper judicial proceedings for a period of three months.

There may be plenty of excuses. But I hold that those excuses are obstacles to overcome, and not reasons to take shelter under and deny or circumvent or restrict the Fundamental Rights as you call them, or the Civil Liberties of the people. There is in my opinion no Chapter more painful to read, no Chapter more disappointing in this Constitution, than that dealing with the Fundamental Rights and the Civil Liberties of the people.

And, corresponding to that naturally there is no suggestion at all about enunciating any set of Obligations or Duties which might make the people also realise that there is in consideration of the rights they enjoy also certain obligations of democratic citizenship that the citizens can learn to appreciate. You are not giving those rights in full because you have fears of democracy becoming mobocracy. You have, therefore, restricted the Chapter on obligations of the citizens.

Take, again, another instance in which in my opinion the working democracy of this country has yet to be realised, and certainly not in this Constitution. I mean the question of the formation and functions of the various organs of the State. Again and again I had tried to put in amendments suggesting, if not a complete separation of the powers and functions and Organisation between

the principle organs of the State. There must be at least such a measure of mutual independence, at least such a degree of mutual freedom as would ensure the operation of each within its own sphere to the fullness that such power is given to that body under the Constitution without interference from outside or other organs of the State. I am afraid that, if we scrutinise the chapter relating to the legislatures, to the judiciary and to the executive, we cannot but come to the conclusion that the freedom or independence of these institutions, the real sovereignty of these institutions, is hardly likely to operate in actual practice. Constitutional *pandits* are not wanting in this House who declare that the doctrine of the division of powers stands exploded. I am afraid I am not one of those who can share that opinion. Even those who have found it necessary to keep and maintain close links and mutual influences between the various organs of the State, even they could have wished to introduce those safeguards, those provisions which might have enabled each of these bodies to function with a degree of independence, with a degree of sureness about their own work. But those safeguards have not been provided. I am not going, Sir, to go over in great detail—there is not the time for it—each of the provisions that would in my judgment imply this aspect of the Constitution.

I cannot help pointing out that the attempts, made again and again, to ensure a degree of purity, a degree of selflessness in the rulers of the country, did not meet with the success that I had hoped that such transparent devices to make the administration proof against charges of corruption would have met with in this House. Time and again, Sir, I suggested amendments whereby the Head of the State, the great governing authorities of the State, would be free from party politics and influences, by divesting themselves of interests which might conceivably lead them to misinterpret their duties and abuse their powers. But again and again, Sir the excuse was held out that this was too idealistic to be practicable in a working word of mere mortals. I am afraid this excuse, without claiming to be nothing more than a mere mortal, does not sound good from those who claim to follow in the footsteps of Mahatma Gandhi who cherish the ideals that he held, and who claim to follow the principles advocated by the Father of the Nation.

These are some of the illustrations. Many more I can give you which would show that the actual doctrine of a working democracy is anything but fulfilled in this Constitution that we are now passing. The mutual relation, for instance, of the several bodies, the formation of the several organs and even the scope for local self-Government I mean, are extremely limited. If you scrutinise the schedules relating to the functions of the Centre—the subjects they are called—and of the local units, you will see that the local units are made utterly powerless. They have neither power nor funds to do their duties effectively. A previous speaker actually mentioned that real self-government, real democracy, can only be in the unit. In the Centre you should have only representatives of the representatives; you see there only delegated power from the units. Now that alone would be real responsible popular government. It may be that the overwhelming majority of a single party and the position of its leader may help you at the moment to obscure the actual fact that in the Constitution as it stands there is room rather for the development of Fascism, than for the development of a working, real democracy. And that danger is much greater at the Centre than in the units. The Concentration of powers that you have in the Constitution in the head of the State,—who will really be a nominal figure-head but in whose, name the Prime Minister functions,—is such that, if he was so minded, the Prime Minister for the time being may become an actual dictator; and his colleagues in the Cabinet and the Parliament even as a whole may become nothing but the registry office of such a dictator.

[Prof. K. T. Shah]

I shudder to think of the possibilities that are inherent. I hope that these possibilities will not be accomplished in the manner I fear that they may be. But even so I cannot but utter this word of disappointment that provisions have found their place in this Constitution which may make of the President or, in his name, of the Prime Minister, a possible, potential, a dangerous dictator.

There are other aspects too, Sir, in this Constitution, which make one think that the hope of a working democracy free from any entanglements, free from any dependency or influence from outside, equal to all and accepting no privileged classes as such, is illusory. We had hoped, Sir, that the sovereignty of the people will be so asserted as to secure at least the absolute ownership by the State of all forms and all sources of primary production. To the attempt by me to introduce such an amendment which would secure to the State the ownership of all minerals, flowing waters and, other primary possessions which can be utilised for the betterment of the lot of man, to that attempt the blank answer was it is not practicable.

These and many more instances, Sir, could be given to show that the Constitution we are passing has failed in material respects, in essential particulars, to carry out the ideals which we had hoped we would carry out. Even so, at this stage I am not prepared to say that this Constitution with all its defects, all its shortcomings, all its weakness should be rejected. I am willing to say that with all its defects, with all its shortcomings, let us work it in the spirit at any rate which we hope and which we think ought to be the guiding spirit, the directing influence of this Constitution. If there are shortcomings, if there are defects, if there are omissions or sins of commission, working experience will reveal them to us. And if we work it with the right spirit, if we are intellectually honest, if we have nothing but the good of the people at heart, then I for one feel sure that, notwithstanding defects, notwithstanding short-comings, this Constitution can be worked in such a manner that real democracy may in a short time be established, and if not in the immediate future, within five years or ten years, the people of this country may become the real rulers of this country.

Shri R. K. Sidhwa : Mr. President, with the greatest joy and pleasure, I stand here to second the motion that has been moved by my honourable Friend, Dr. Ambedkar to pass the Third Reading of this Constitution. At the outset, Sir, with your permission let me make a personal reference. You know, Sir, that I was born in Sind; the prime of my life, thirty two years, I spent in the public service to serve my Sind people to the best of my ability and in my humble way. When the British Mission declared that there should be a Constituent Assembly to frame a Constitution, Sind was allotted one seat, and I had a desire to serve in the Constituent Assembly, but my Friend, Mr. Jairamdas Daulatram was nominated. Sir, I am greatly indebted to my leaders, the Honourable Sardar Vallabhbhai Patel and the Honourable Maulana Abdul Kalam Azad who encouraged me to sit in this Constituent Assembly. They found out a Constituency for me and they suggested C.P. and Berar. The Maulana Sahib gave me a letter to my esteemed Friend. Seth Govind Das and he and Pandit Ravi Shankar Shukla included me and got me elected unanimously to this Assembly from C.P. and Berar. I take this opportunity of thanking Seth Govind Das and Pandit Ravi Shankar Shukla and, members of the C. P. Assembly for giving me an opportunity to come here and serve in this Constituent Assembly. Sir, thus, it has given me an opportunity to play my little part in framing this Constitution and thus acquire the citizenship of India which I always cherished and what shall be always proud to retain. There was a little effort made in this House after the partition that

I should be unseated because I came from Sind. You, Sir, very rightly interpreted the law and said that I was returned from C. P. despite that I have been residing in Sind, although I am not today so. (Dr. P. S. Deshmukh : I hope that will be the last time). You rightly interpreted the law that I am legally returned and you announced that in this House. I am thankful to you, Sir; it was not a favour but you did the right thing.

Now coming to the Constitution, on the 6th of December 1946 before entering this House, this memorable hall which has been renovated particularly for framing of this Constitution which will be remembered in the history of India, some of us, friends were informally discussing what will be the type of Constitution and how much time would it take. One of the well-known Members of this House, who has subsequently resigned, stated to me, Sir, that the Britishers are not going to leave India and this Constitution will be a second Nehru Report. Another honourable Friend Seth Govind Das told me that it will take six months: I said it will take the least two years. (Shri Mahavir Tyagi : You were right). From experience we have seen that today is exactly three years, or rather to be more accurate 15 days less than three years, when we have completed this Constitution. On the 1st of February 1948 after our deliberations from the 9th December 1946 to 1947 a draft Constitution was presented to us. It included 313 articles in the Constitution. Today we have now presented to this House 395 articles, that is to say 82 new articles were inserted. Then there were nearly 220 old articles which were simply scrapped off and in the case of nearly 120 articles the phraseology is materially changed. Accepting the preamble without a change or single comma or punctuation, several articles have been changed and I am very glad—and the House is also glad that we have by experience thought it desirable that it was not in a hurry that we should prepare a Constitution. We are therefore Tight in taking this long time and preparing a Constitution for which we shall all be proud. There have been criticisms outside this hall that we have taken a long time and wasted some money. I give no countenance to that. It was also stated that some of us were sending amendments for the purpose of sending amendments and making speeches. We did not countenance or listen to their arguments. We were fighting our battles in this Constitution Hall, to put our views and we have fought our battle very well, and I am glad that the Drafting Committee have taken our battles in the right spirit. We have done our duty. Proceedings in the matter of record are there for future generations to see and the historians will have to judge whether we have wasted the time or we have done our duty to the people of this country and framed a Constitution, for which all of us are proud and I am very proud too.

Now in this Constitution, the redeeming feature is that of citizenship. It was a very ticklish question after the partition as to how to define the citizenship, and the Drafting Committee and others who have given their attention, they deserve credit. Those displaced persons have been straightaway told that even if their parents are born in India they will be automatically recognized as citizens of India.

Then coming to the Fundamental Rights there have been many criticisms, but on the whole I do think, and I have stated it repeatedly, that the freedom of speech or freedom of expression of views does not mean that a person should have license to speak any thing that will be detrimental to our freedom. This is known in all democratic countries. My honourable Friend Prof. Shah was just now criticising 'democracy'. Let me state that democracy does not mean that every person has got his independence to choose and do as he likes. Therefore if there are certain restrictions that have been imposed in certain articles of the Fundamental Rights, it has necessitated us to do so, although we may not like it. I do not like some of them. I would like to be an absolutely free man as I like but I have also to work under certain limitations and therefore, the Fundamental

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Rights are the rights of which we can stand today before anybody and state that these are our rights and if anybody desires at any stage to trample our right, on a mere application to the Supreme Court a man can get his justice there. What more do you want in this Constitution?

Another redeeming feature is the adult franchise. The adult franchise is the greatest risk which the Constituent Assembly has taken. I may tell the House it is the greatest risk for this reason that 85 per cent. of our population is illiterate and it is even now doubted whether the adult franchise will be successful. Whatever it may be, Sir, successful or not successful, we have taken the risk rightly. We had to take the risk and we have taken the risk. A democracy without adult franchise would have no meaning and, therefore, I am very glad and the House is proud that we have in this Constitution put in 'Adult Franchise'. There have been critics outside this Hall, they have been criticising our work that we have been monopolising and we want to stay here for ever. If that was the desire of this Constituent Assembly we could have framed this franchise in a different manner, but we felt that whatever it may be 'adult franchise' is there as the Congress has been proclaiming for the last fifty years that whenever they attain freedom they shall see that every man and woman of the age of 18 or 21 shall have the right of a vote and that I consider is the greatest right. (*Interruption*). It is 21. I would have personally preferred 18 but it is 21, and this is the thing that the future people have now to rightly exercise. It has to be seen how they exercise their right in returning the members to the various legislatures. It is stated that the illiterate people will dominate the future legislatures. Well, I do not mind if illiterate people come from the remotest parts of the Indian Union. I have seen that sometimes illiterate people have a power of originality and they argue much more ably than some of us, literate persons. Therefore, I am not at all frightened and we have taken the right course and if there is a risk, I know there is a risk and we have taken it in the right direction.

I am really sorry that as far as the local bodies are concerned, this Constitution has been simply silent, silent in the sense that they are not given the due share which we all aspire to see that every village and every villager should become prosperous and self-sufficient. The ideal of our great leader, Mahatma Gandhi was the "Rural Swaraj" that every village should be self-sufficient and self-supporting. I am sorry to state, Sir, that part has not been fulfilled in this Constitution despite the amendments that I have been able to move and which I am sorry to say the Drafting Committee were unable to accept.

As I said the other day, in the earlier stages, when we were discussing the Objectives Resolution, the House was unanimously of the view that the Centre should be strong and therefore the Drafting Committee had that point in view—I do not say that the provinces are mere skeletons, they have been given many powers—and the Centre has been made strong. I am for it; but that does not mean that the villages should not also be made strong and the villages should not be left to themselves. I am indeed glad that the various provincial Governments have passed Panchayat legislation : the Bombay Government has passed the Bombay Panchayat Act; the Madhya Pradesh Government have passed the Janapada Act; the United Provinces Government has passed the Gaon Panchayat Act and the Bihar Government has enacted the Village Panchayat Raj Act. All these are there. But, if you do not give them the required money, what can they do? My regret is that the legitimate share of the finances due to the villages is not given to them, for village administration and village self-sufficiency. The provinces do not give the villages their due share. The local bodies today are a sham, I should say, in this country. I hope, whatever the Constitution, the provincial Governments will make efforts to see that the villages are made

self-sufficient and unless we have village self-sufficiency, there will not be happiness, and prosperity for the common man in this country, for whom we have the greatest regard.

Sir, the other redeeming feature in this Constitution is that we have abolished communalism. At the earlier stages, frightened by the remark that we would be called ungenerous to the minorities, we enacted in the old Draft Constitution presented to the House on the 1st February 1948, communal representation I come from a minority community. I have held during my whole life that this minority was a canker and a poison in our political life. Subsequently, it has been realised by this House that the various communal representations must go and they have gone. It was the happiest day when, through the efforts of the Chairman of the Minorities Committee, Sardar Patel, we have been able to erase that communal representation which had been introduced into the Constitution. Today, this Constitution which we are presenting to the country and to the world will not show any kind of communalism in any of the articles. As far as the Scheduled Castes and Scheduled Tribes are concerned, I have expressed my views. I do not consider them as a communal body. I consider them as a class of people from the Hindu community to whom our great revered leader Mahatma Gandhi felt, and rightly felt, that a great deal of injustice has been done. Although a Parsi, I have had the privilege and honour of working as the Secretary of the Harijan Sevak Sangh in my province and I can claim to say that really a great injustice has been done to them. It is but right that we have provided for them special privileges. I am confident that within the ten years after the commencement of the Constitution, this class of people will also have come up to the level and standard of the other people and these Scheduled Castes will automatically go away after ten years.

Sir, every effort has been made in this Constitution to see that the Judiciary is put above any kind of influence of the Executive. What more do you want, I ask? We have taken pains to see that howsoever great influence the Executive have, it should have nothing to do with the Judiciary, so that the rights and privileges of the citizens should be fully secured and protected. I have only to remark that sometimes the Judges are also puffed up. While we have given them all possible supremacy, they must also bear in mind that they should not be puffed up. If any criticisms are made of their judgments, they take action for contempt of court, bring a prosecution and themselves sit in judgment in such matters. I brought forward an amendment; I am sorry to say that it was lost. The Judges have no business, when they say that the Executive and Judiciary should be separated, to order that such and such newspaper or such and such person has committed contempt of court and to order that he should be prosecuted, and again, himself to sit on the Bench and decide the Issue. This is a very unheard of procedure. I leave it to the good sense of the future, Judges, right from the Supreme Court down to the lower courts, and hope that the Supreme Court will give a lead to the other High Courts that in the matter of contempt of court, they should not behave as they have been behaving in the past.

On the question of language, how proud are we? Some state that we should not have a language and that English should continue. A country without, a language of its own, could never be a democratic country. This was a ticklish question and there were those days when there was a hectic fight going on over this. But, with one voice, the House decided that we should have the Hindi Language and we are proud of it. We have not forgotten, at the same time, that the regional languages should be retained and we have retained them.

History will judge this Constitution. It is certainly not perfect; there may be defects; I know there are defects. I told you that I fought my battles in this hall by moving my amendments and I lost them. But, it is my duty to

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say to the people that this is the best Constitution and I expect every Member of the Constituent Assembly to say, despite any difference of opinion, that this is a Constitution of which we are proud and we must proclaim to the world and the world will realise that this is a document worthy of preference by various countries in the world. Therefore I feel proud of this Constitution when it becomes law on the 26th day of January 1950, the historic day on which we shall inaugurate the Democratic Sovereign State. The various articles of the Constitution have been given a great deal of publicity, and rightly publicised, and today every man is conscious what is this Constitution and what is this article. Two years ago when we started the work, people were not conscious of what the Constitution was. But, by the prolongation of the sittings and the sessions of the Constituent Assembly, people are taking great interest in discussing the various articles after reading them in the newspapers, although the newspapers give a scanty report—they cannot give a *verbatim* report. People are today taking a great interest in what this Constitution is and what these articles are, which give to the people their rights and their obligations.

Lastly, Sir, I would say, there is an article in the Constitution that the privileges and rights of the members shall be preserved, as those prevalent in the House of Commons. I got up half a dozen times to know from the Drafting Committee what were the privileges in the House of Commons; but none of the Members knew it; nor have they enlightened me. The Honourable Dr. Ambedkar, the Chairman of the Drafting Committee when he was confronted with my question repeatedly, said, “I have got some South African Parliaments privileges; you come to me; I will show you.” I have written a letter to him to send me the same; but I have not received a reply, nor have the privileges been shown to me. I do not know whether it is in existence in his office; but I have not been supplied with a copy. I am really anxious to know what those privileges are. It is really vague to put in the Constitution that the members will enjoy the rights and privileges which are prevalent in the House of Commons which the Drafting Committee is ignorant of, of which they have no knowledge. It was not proper to have put such a thing in the Constitution. Whatever it may be, it is there and I hope that in the first session of the Parliament, efforts will be made to see that the members’ rights are well protected and secured.

In the end, I will only state that it was under the inspiration of our great leader whose picture hangs over your head, Sir, that we were all the time discussing these articles, and I am quite confident that although his body is not there, his spirit will guide us rightly after this Constitution becomes law and that we shall act faithfully and loyally and follow the teachings that he has all along his life taught us, faithfully and honestly.

Prof. N. G. Ranga (Madras : General) : Mr. President, Sir I am very glad to say that this is one of the memorable days that this House has come to witness, during its career of more than two years. There were times when this House was very much inspired by the speeches made by our Prime Minister and Deputy Prime Minister and many, other leaders of our own. This is also, a memorable day in the same sense because today we have begun our mutual fencitations over the great task that we have all performed in fashioning out, a Constitution for the future of this country, for the free India of our dreams, which has now come to be a reality. It is also in another sense a memorable day because with the blessings of this House and with your own personal blessings and the strength, support and inspiration of our two great national leaders—Panditji and Sardarji—a new province is being brought into existence as a result of the deliberations and the work of this Constituent Assembly. I am fortunate in being an Andhra and in being able to do my own little bit by the

side of our two veteran leaders, the Kesari, Mr. Prakasam and our Rashtrapathi Dr. Pattabhi, in trying to bring into existence the Andhra Province, and we have the good news today that the Congress Working Committee has agreed to request our Government to bring into existence this Andhra Province for which the Andhras as well as others have been fighting for the last 35 or 36 years. My only regret is that the founder of this movement, once the Acting President of the Indian National Congress, one of our great martyrs in this country. Desabhakta Konda Venkatapayya, is no longer alive to see this day and to hear this great news. I sincerely hope that the Government as well as yourself as our President, will do their best to take the necessary steps under Section 290 of the Government of India Act and later on under the appropriate section of our own Constitution, for the creation of this province and help it in every possible manner to make its debut in the realm of our own States in this country and enable it to make its own contribution to the progress of an Independent India.

Coming to the Constitution that is before us, I am glad to say that in several respects this Constituent Assembly has been able to set an example to the rest of the world. We have read only to-day that Mr. Truman, President of America, is trying to persuade his own countrymen to confer civil rights upon the Negro peoples of that country who form 10 per cent of their population. But according to our own Constitution we have sought to confer all those, civic rights upon our own Harijans, other Scheduled Classes and backward peoples and backward Tribes. We have banished untouchability first of all from our minds and from our social matrix. We have agreed that there should be no untouchability at all and anyone who observes it should be taken to task. We have also agreed that our Scheduled Castes should be protected. My Friend Muniswamy Pillay was rather afraid that it might not be possible for them to make such progress within the next ten years that it would be possible for the whole of the country to say good-bye to these reservations at the end of the ten years, but I am more optimistic and what is more, I am anxious also that our Indian democracy should play its role so well and perform its duty by our Scheduled Castes so satisfactorily that at the end of ten years our own Scheduled Caste friends would be willing to join hands with all others in saying good-bye to these reservations.

Then, Sir this Constitution has set another example to the Imperialist Nations of the World and also to the tribal people especially of Africa, by that Chapter we have included in the Constitution for the protection of tribal peoples of our country. Ours, as everyone knows, is an ancient country and therefore there is such a lot of debris of the past which has got to be cleared. We cannot clear it in a rough-and-ready fashion. We have to take constructive steps and our Constitution seeks to take those constructive steps by agreeing to create autonomous tribal republics in those far distant lands of Assam and providing a chance for the tribal people to live not only their own social and tribal life but political life, in a manner which would be conducive to their rapid progress. We have set an example to all other peoples because, as we all know, the British, the Belgian, the French and other Imperialists who were having their control over the peoples of Africa are today hard put to it to find a way by which they could possibly help the tribal people in those countries to make the necessary progress and as we all know that the tribal people of those countries themselves are in need of means-political means-by which they can make their own rapid progress, not only towards complete independence as we have achieved, but also towards social progress and I feel that the way for their progress lies in the manner in which we have ourselves prepared this Chapter and shown the way to our own tribal people.

Sir, in order to achieve religious harmony many countries have had to undergo a tortuous history. In Canada, in England and in France where there was

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conflict between two different denominations of Christianity itself, it took so many years to come to a harmonious solution as to how their various denominations should be allowed to be taught, preached and propagated for their progress as well as for their social life. In our country we had to harmonise the interests as well as the proselytising proclivities of some of our own religions and we have many more religions I am afraid that many other countries—and yet we have struck upon, a solution which, I am sure, will be considered not only by Constitutionists but also by Sociologists all over the world to be highly progressive, to be harmonising and to be useful. There is also this difficulty of bilingual areas in regard to which also, the League of Nations of old and the present U. N. O. and several peoples of various countries have had to wrestle with their own minorities, their interests and their conflicts. We too in our country have come to a solution which is progressive, which would bring about harmonious relations between different people speaking different languages, or living within the same area or within particular areas of different provinces. And I am glad, Sir, that power has been given to the Central Government to see to it that the peoples living in these bilingual areas are able to enjoy the privilege of getting their children educated in their own languages, while at the same time, enjoying the privilege of getting into the services, and the legislatures and also the political life of the regions of the Province or the State in which they happen to live.

It is also good, Sir, as you yourself so ably put it, that we have come to take a decision with regard to our common language. It is going to be one of the biggest constructive efforts that this country would be making, in order to weld all our different people into one strong, solid and harmonious nation; and I sincerely hope that it would be possible for our children and their children not only to learn this language, but also to enrich it with all the genius that we have been able to develop, and our ancestors have been able to develop through their own languages, in this vast country.

We are very grateful to our Sardarji, whom we all love and respect, for the manner in which he has consolidated our country and integrated province with province, State with State, and all of them together into this great whole, this united India; and for achieving a social revolution of which any country or any nation can be proud of, a revolution achieved in such a non-violent manner and in such a short time a record time, indeed.

Sir, we are laying the foundations for our democracy. I am satisfied for the time being, Sir with these foundations. We have these Fundamental rights. We have not contributed very much to these, beyond what we have been able to gain from the experience of the rest of the world. But at the same time, I am glad to say, we have tried to draw as many lessons as possible, for our own adoption and for our own practice, in the formulation of these Fundamental Rights. In one respect I think we have gone a little forward, and rightly so, and that is in detailing those rights which we can establish in a court of law, if any executive authority were to try to violate any one of them.

I am also glad that we have taken sufficient care to prevent the kind of experience that the United States of America has had for several number of years, over the conflicts that arose between different States on the one side and also States and the Federal Government on the other, and we have taken a lesson from their experience and made sufficient and necessary provisions in our Constitution in order to prevent any conflict between one State and another, and we have also established harmonious relations in the development of their own inter-provincial irrigation, flood control and various other subjects, and also to see that in the economic development of our country no one State would be able to prevent the general development of the country or the progress of its neighbouring States.

I am also glad that we have had the courage, the moral courage, to place certain restrictions upon the kind of liberty or kind of license that any one group, of people, a few individuals or many, would like to enjoy in this country and exercise. It needed moral courage because so many of us have been to jail and suffered from the detention and all the rest of it, and therefore, We know the pangs of it, and we have been inveighing against this aspect of executive authority for so many years. And therefore, we had to realise its necessity, and it is not easy for erstwhile revolutionaries to realise so soon after the achievement of their immediate objective, namely, independence, that if the country is to grow in strength and in stability, and if we are to have social progress at all in the country, then we must be prepared to restrain such of those groups, parties or individuals as would like to stake their all and sacrifice the good of everybody for the benefit of their own particular isms, their own communalisms, their own castes, creed or class or their own politics. Therefore, I do not think that any Member of this House need have to be apologetic to anybody who might come forward and say, "Oh, you have put all these restraints upon such and such fundamental rights, and so on." We have also taken care to fix certain limits to the exercise of executive authority even in this direction.

We have also displayed our moral courage in another direction, and that is, in accepting the need for a strong, stable, loyal and patriotic public service. There were days when I was a young man, in the university, when Mr. Lloyd George began to speak about the "steel frame" in India, and I felt very unhappy. I used to be very angry, and I thought "Why this steel frame" ? But now within the period of three years, we have been able to realise how necessary it is for us, if we are to achieve cooperative progress or Gandhian Socialism, how necessary it is to have a Civil Service, and if we are to have a Civil Service, how necessary it is to trust them, and to be trusted by them, to stand by them and to be served by them in a loyal fashion. So I am in agreement with the provisions made in this Constitution for the protection of the salaries and emoluments of our public servants. But this does not mean that we are giving a *carte blanche* to our public servants. We are providing these privileges to the Civil Service with the hope and with the object of seeing that they do serve the country loyally and efficiently.

Sir, with regard to one aspect of our Constitution I am a little unhappy, and that is, the degree of centralisation that we have provided for in this Constitution. Not that I do not want a strong Central Government. All of us want it. But just contemplate for a moment what is likely to happen if another Hitler were to arise and take charge of the Central Government, or to play the same pranks and tricks that the earlier Hitler had played in Germany, by dismissing socialist provincial governments or one or two liberal provincial governments. We have given certain powers to the Central Government here which would empower them to dismiss certain of our Provincial Governments. Whether this is a good thing, whether it is a progressive thing, that is yet to be seen. But that power we have agreed to give to our Central Government in the hope that our people would see to it that the Central Government of the future would always be democratic, that it would not be allowed to degenerate either into a Communist totalitarianism or a Fascist totalitarianism.

Sir, with regard to our own Provincial Governments too, and their constitution, we have taken care to provide for them a democratic basis. It is very necessary for our own people to see to it that this basis is respected and strengthened. The success or failure of any constitution depends upon the people who have got to use that Constitution, who have got to help to grow the various conventions, conventions over conventions, growing from precedent to precedent. Are our people going to take their responsibilities seriously? I have every confidence that they will. I have every confidence that people who accepted the leadership of Mahatma Gandhi and followed it over all those troublous years

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and fought imperialism and achieved freedom for this country would also have the necessary wisdom and statesmanship to help us to grow from this Constitution into a higher and higher conception as well as experience and practice of democracy. I look forward to the day when it would be possible for us to achieve a Cooperative Commonwealth; as Bapu was good enough to call it through the, Kisan-Mazdoor-Buddhijeevi-Kalakar raj-that is, the Raj of the toilers of the country, not the Raj of the idlers or exploiters, but the Raj of the people who lived by their own toil, who made their contribution to the society in an honest and progressive manner, the Raj of the people who lived, worked and died for democracy and democracy alone and never countenanced dictatorship.

Mr. Naziruddin Ahmad (West Bengal : Muslim) : Mr. President, Sir, once upon a time a man went on a sea voyage and returned to his village after a long time and people asked him what was the greatest wonder that he had seen. He said the greatest wonder that he had experienced was that he had returned home. So far as this Constitution is concerned, the greatest wonder is that we have finished it. One of the other wonders and possibly a most exclusive wonder in the world was the invention of a "second reading which we concluded yesterday.

An Honourable Member : Second and a half reading.

Mr. Naziruddin Ahmad : May be. This kind of reading has never been known in any constitutional or legislative history in any part of the world; and somehow or other, I was an unconscious instrument in creating this mischievous state of affairs. I had suggested at a very early stage the idea of the Drafting Committee revising the work of the second reading. I had a suspicion that the way in which we were proceeding would lead to many mistakes. I therefore suggested a rule that the Constitution as settled at the second reading be sent to the Drafting Committee for revision. It was then strenuously opposed by Dr. Ambedkar, but ultimately he agreed and we can now see the practical value of the rule. The unfortunate result of that procedure was that whatever was intricate or difficult or anomalous began to be made over to the care of the Drafting Committee. There was however a condition that the Drafting Committee should make changes only of a formal nature and further amendments by members should be limited to those amendments. The power given to the Committee was similar to that given to the Secretary in the Legislatures. An unforeseen result of the rule was that a large number of anomalies could not be considered by the House and were shut out at the second reading. This was due to another rule introduced at the instance of Shrimati Durga Bai. Punctuation, grammatical and other formal amendments were passed over as if these were nothing. They have never been considered by- the Drafting Committee and the House was, absolutely debarred from considering them. This reading may, to my mind, be fittingly described as the fourth reading. It is something of a new precedents for the world.

The rule that formal, grammatical and punctuation amendments should be left over was supposed to be based on the English practice, but in England there are no such drafting mistakes as we are accustomed to here. Drafting mistakes there are absolutely out of the question, impossible and a thing never to be thought of. But here we have taken considerable liberties with the English grammar including punctuation and the wording of the Constitution. This led to entire ignoring of grammatical and formal errors and this led to errors and anomalies with which the world has never been familiar.

I submit these rules have in practice led to a serious state of affairs. There are a number of errors, anomalies, redundancies and repetitions. I shall refer to only one repetition of a glaring nature. Article 89, clause (1) says: "The Vice-President of India shall be an ex-officio Chairman of the Council of States." Exactly the same provision, in the same identical words also occur in article 64 where it says: "The Vice-President of India shall be an ex-officio Chairman of the Council of States". One of these provisions should have been deleted. I ventured to attempt it, but I was ruled out on the ground that such glaring repetitions would be looked over by the Drafting Committee. The Drafting Committee have simply ignored it and the repetition remains. (*Interruption*).

Shri R. K. Sidhwa : What is the mistake?

Mr. Naziruddin Ahmad : The same provision in identical words appears in two places in the Constitution. But it has been passed over. It is no use holding a post mortem examination of this defect.

Shri Mahavir Tyagi : But we want to follow your argument.

Shri R. K. Sidhwa : Where does the mistake occur?

Mr. Naziruddin Ahmad : I have no time to be cross-examined by Members.

Mr. President : I would ask honourable Members to let the speaker proceed in his own way.

Mr. Naziruddin Ahmad : There are a large number of anomalies and mistakes with which the Constitution abounds. I will not tire the House with a catalogue of them. Some of the amendments moved in the House have not been accepted by the Drafting Committee, in the House not because they were not considered necessary, but because of a kind of bashfulness or nervousness that acceptance of those things would imply some amount of inferiority. I should have thought that that was not a correct attitude to take. Many amendments have been quietly accepted at the revision stage without any acknowledgment. I shall cite one or two typical cases. One is, there were in the Constitution expressions like "article such and such of this Constitution", "Clause such and such of this article". The repetition of the words "of this Constitution", "of this article" in more than one hundred places is against all principles of drafting. I repeatedly pointed out these redundancies. But they were not then accepted. But at the revision stage they have been quietly a without acknowledgement. I do not grudge the Drafting Committee the credit, because it has effected some improvement. Then there was the expression "Notwithstanding anything contained in this Constitution". The word "contained" according to modern principles of drafting is redundant. This word to which I objected has been removed in all places, also without acknowledgment. Then I referred to expressions "date of commencement of this Constitution" and pointed out that the word "date" should be omitted because that is clearly implied. This has also been done by the Drafting Committee, but again without acknowledgment. Then, I said that Judges should be spelt with capital letters. This has been done. Ministers also, I said should be capitalised. This has also been done. All these have been corrected in hundred places without, acknowledgment.

An Honourable Member : It is a great change indeed

Mr. Naziruddin Ahmad : We should be grateful even for these small improvements. But so far as Courts are concerned, they have, on my suggestions, used capitals in respect of the Federal Court and High Court, but smaller Courts have been looked down upon by the Drafting Committee and they are in small letters. Their acceptance of this is half-hearted.

Shri H. J. Khandekar : May I draw the attention of the honourable Member to the Clock !

Mr. Naziruddin Ahmad : Such words are usually capitalized in all our statutes. Such expressions as Magistrates, District Judges, Assistant Magistrates and a large number of similar names have been written with small letters contrary to established practice.

The greatest defect with the Drafting Committee, however, was that their minds were continually changing. In fact these changes were so apparent and so persistent and almost of such daily occurrence, that it does not require to be mentioned specifically. These have resulted in many anomalies.

Then, Sir, one other defect mentioned in the course of the debates was that the Drafting Committee was increasingly encroaching upon the Provincial sphere and succeeded in denuding the Provinces of all responsibility and power and in concentrating power in the Central sphere. The result of this would be that the Provinces would have responsibility without powers. That would produce irresponsibility. This happened in the case of the Dyarchy which miserably failed.

Another defect is that the word "State" has been grossly misused. "State" means no less than several different kinds of institutions in the Constitution, and a reader will have to take careful note of the special definitions of the word "State" in each Part in order to know what is really meant, and even then he cannot be sure. This is due to the fact that the Drafting Committee failed to use specific names to distinguish between the Central State, the Provinces, the Indian States, the District Boards, the Municipalities, the Local Boards and the Union Boards. They have all been called "States". The anomalous result is that provisions which should apply only to the Centre have been made applicable to Municipalities, District Boards, Local Boards and even Union; Boards. There are passages to the effect that "the States shall promote international peace and security" and "maintain just and honourable relations between nations". "foster respect for international law and treaty obligations between nations" "and encourage settlements of international disputes by arbitrations"—as if the Municipalities, District Boards and other local self-governing bodies will try to do this! What is meant is the Centre. Only confusion has resulted from this needlessly comprehensive definition. The reason for this is the passion of the Drafting Committee to use an expression of a sonorous and catching nature. It is this passion for grandiose terminology that has induced them to do so. But the English language was rich enough to have given them different words to express these ideas correctly in the context, and expressions like the "self-governing bodies" or "local bodies" might have been used in special contexts only where necessary. I submit this has created considerable confusion.

Then the Drafting Committee has interlocked the word "the" with the "State". The State has been defined as "the State". It is an unheard of procedure and Dr. Ambedkar could only cite an example from Australia in support. Whenever in difficulty, just as Mr. Sidhwa has pointed out, he cites the example of South Africa or Australia. But when asked to show the authority, he declines to accede. I submit, Sir, that these words should not have been interlocked. The word "State", without being well-locked with "the" should have been used for the definition. The word "the" is a definite article but it has to be used in different places with indefinite effect. The result has been that we have always said "the" State, meaning also the Municipalities, District Boards, Local Boards, Union Boards and other similar bodies. Had there been only one State in India the word "the" State would have been proper. It cannot be used in indefinite connotation. There would

be, according to the definition of “the State”, several lakhs of States including the District Boards, the Municipalities, the Local Boards, the Union Boards, etc. So when we say “the State” at various places, we really mean several lakhs of States. The word “the” is out of the question in the contexts. We should say “this” State, or “that” State, or “a” State, “any” State, or “every” State according to the context. The adjectival adjunct should depend on the context. The result of this inter-locking is to put the draftsman into a straight jacket rendering freedom impossible.

Shri Mahabir Tyagi : Have you been a school master?

Mr. Naziruddin Ahmad : Then, Sir, there is something like a passion for the use of the expression “Dominion” of India. In fact it is just like a bird which has lived in a cage for all its life when released it wants to go back to the cage. It is a jail bird, who if released, commits a crime again and goes back to jail. Although we have been released from the bondage of a Dominion, we still want to go back into it. Instead of using a very simple expression, the “Constituent Assembly of India”, the Drafting Committee has unnecessarily introduced the expression the Constituent Assembly of the “Dominion” of India. This is perfectly unnecessary but Dr. Ambedkar told us that he was unable to find a way out. The way out was simple: it was simply to mention the Constituent Assembly of India—that would have been sufficiently expressive and we have used it so often that it would not have created any anomaly.

As. Mr. Sidhva has pointed out, no one knows what are the privileges of the House. I pointed out during the second reading, that the privileges of the Members of the House of Commons were unknown and scattered in different English rules and in text books. They should have been collected. This work should not have been shirked by a vague reference to the privileges of the Members of the House of Commons. The privileges should have been worked out and incorporated in the Constitution. But the Drafting Committee had neither the time nor the inclination to do so.

Then, Sir, with regard to the pay of High Court and Supreme Court Judges. It has been reduced most unjustly and unnecessarily and in some cases there was an attempt to reduce it with immediate effect even with respect to present Judges. That would have gone against the contract on which they were appointed. On my objection there was a concession that Judges appointed up to 31st October 1948 should get their old pay. But that has again been grudgingly removed and the pay of existing Judges has been retained.

I shall refer to another anomaly as to the transfer of cases—small cases involving an interpretation of this Constitution. Some how or other the question of law involving the interpretation of this Constitution has a fascination for the Drafting Committee. In small cases—petty cases—in the districts, if any question of the interpretation of the Constitution is involved, the result will be that it will be obligatory on the part of the High Court to withdraw the cases and to dispose of these at once or to determine the issue. In fact, I submit that often this question of interpretation of the Constitution will depend upon facts. The High Court will have to be over-flooded with a large number of petty cases and a veteran litigant will take the objection that a question of interpretation of the Constitution is involved: the case will have to be withdrawn and an expensive litigation will follow in which a poor man will be at a disadvantage. So this will be used to the disadvantage of the people at large making the administration of the law more costly and dilatory.

Then, Sir, I find one individual who has been given a place in the Constitution with out any function, that is the Uprajpramukh in article 366, clause (30), He has been given no functions. The Uprajpramukh is just like Euclid’s point which has existence but no magnitude. This Uprajpramukh has been given

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a status but no one knows what it is. He has been given no function. No indication is given in the Constitution as to whether he should function in addition to the Rajpramukh, or whether he would be merely supplementary functionary. I should submit, as Mr. T. T. Krishnamachari, in a different capacity once said, that the Constitution is so badly drafted that it will be a lawyer's paradise. Of course on his elevation to that elevated body, the Drafting Committee, he has changed his opinion.

I suppose I must come to a close. I owe some apology to this House for criticising the Drafting Committee in this manner, but thanks are also due to the Drafting Committee for the troubles they have been put to. It must be acknowledged in all fairness that the Drafting Committee did their best; they worked very hard but worked without any definite, settled or fixed plan. They began to change their plans every day and that is why so many anomalies have resulted. They were however in many cases forced by the Party in power. There is another anomalous position. Part VI deals with the Provinces. In order to adapt this to the States, Part VII was introduced with some adapting sentences. These sentences are in a most perfunctory condition and they could and should have been incorporated in Part VI. It would have been very easy to say that wherever there is the word "Governor" the words "or Rajpramukh" be added. That would have been quite simple. I gave notice of an amendment No. 364 to this effect. I did as well as possible and the only thing for the Drafting Committee was to accept the same with modifications if they desired. That would have made the thing sensible and a continuous whole. The provisions relating to the Provinces and the States have been combined in all other places except this. But I believe the Drafting Committee was tired and they must have been absolutely overworked and were unable to go further, though this improvement was desirable. My amendment was ready-made and only a little revision would have done.

In closing my brief remarks which for want of time are of a sketchy nature, I cannot but mention the deep debt of gratitude which 'We owe to you, Sir, personally. Whatever has been done in the House, you were the guardian of Members who found it their duty to speak against the Drafting Committee and you did your work so wisely, so liberally and so well that the House owes a deep debt of gratitude to you. You have been extremely watchful of the proceedings—not that you did not follow the anomalies which the Drafting Committee was committing, but it was not in your province to interfere on the merits—and you gave the greatest latitude to the Members who found it an unpleasant duty of speaking against the Drafting Committee.

Sir, with all these and many other faults, I submit that the Draft Constitution should be accepted. It is not the drafting that matters. The drafting is very bad, it will lead to innumerable cases, as Mr. T. T. Krishnamachari in a different capacity suggested, on which lawyers will delight, but I believe that the success of the Constitution depends upon the spirit in which it is worked. If it is worked well, this bad Constitution, lame as it may be, will give encouraging results and will make the people of India freer and freer politically and economically with the passage of time.

Shri B. Das (Orissa General): Sir, at the conclusion of the three years' hard work, however inadequate may be my own contribution in the shaping of this Constitution, I have reached the conclusion that we have done our task well. There must be differences of opinion because if all of us will be of one mind it will be fascism or autocracy, it cannot be democracy. Therefore, there might have been and there may be differences now and hereafter, but the fact stands out foremost that we have got our Constitution, a democratic Constitution.

For that my heart goes to you for your wise guidance in bringing the ship safely to the port. My thanks are also due to the Drafting Committee. However much I might have disagreed or may still disagree with them on certain articles, they have discharged their duties well.

Sir, the feeling that has been left in my mind all the time, though the Drafting Committee worked very hard to bring this Constitution to this finish was that it was a pity that the Constitution did not reflect the spirit of the Congress. How it happened that the Drafting Committee had its majority in non-Congressmen it is not for me to analyse at present, but that feeling persisted in my heart all the time, and I think many of my comrades here will agree with me, that the spirit of Congress is lacking in this Constitution which will be our *Magna Carta* for some time to come.

Before I proceed, I must bow in reverence to the Father of the Nation who fought the battle of freedom and independence of the Indian people, who made us come to this stage and whereby we have framed this Constitution. He is no more with us though he is watching us, but in all humility, in all gratitude I remember him this moment. Whatever we have achieved, in spite of that Commonwealth link which I do not like nor many of us like here, it is all due to the Father of the Nation.

I have heard charges outside by those who profess to call themselves Socialists that this Constitution will be a dead letter. I remember a few months ago the Socialists produced a book, "A Draft Constitution". If the Socialists have the hardihood, if their leader Sjt. Jaiprakash Narayan has the hardihood to speak out that this Constitution would be a dead letter, I challenge them, I challenge him and I challenge the Socialist Party. If they are to inherit the Kingdom of Heaven, the Government of this country, from the Congress

Shri H. V. Kamath : We want the Kingdom of the Earth.

Shri B. Das : Kingdom of the Earth, I apologise, I accept. If they are to inherit this administration from us the Congress Party, they must be realist and practical. The very small minority they are, they should not talk of this Constitution being scrapped. What alternative have they? I have some respect for Sjt. Jai Prakash Narayan but I ask him from the forum of this House to be realistic. If they think they can administer better than the Congress Government, let them produce a Constitution and let us see what fundamental differences there exist between this Constitution and the Constitution that they imagine to produce.

Before I go to the points I wish to comment, I will also thank the Secretariat of the Constituent Assembly and all those who are not with us at present but have gone on work of State outside. I remember Sjt. D. N. Rau who, as our honorary Adviser, rendered us great advice in the light of his wide knowledge and experiences. There are others who have gone on foreign service, to our Embassies and the like. To them all our thanks are due. I hope my colleagues will agree with me in offering our thanks to them for the services they rendered to the Members of this House in giving them proper advice at proper times.

Sir, are we a Republic or are we still suffering from the sin of being associated with the Commonwealth countries? The Preamble says that we should render justice, economic, social and political. Can we render economic justice as long as we are tied down to the apron-strings of the sterling areas? The suffering of the Indian masses on account of the high prices prevailing in India today is all due to our subjection to the Commonwealth and to the foreign country, the United Kingdom. The United Kingdom is responsible today for all our economic distresses. After seven of years of high prices, the index prices

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in the United Kingdom have gone up only by 60 per cent. while in our poor country the prices have gone up to 400 per cent. In the United States of America the prices have risen only to 220 per cent. And yet we were allies during the war Sir, I was no ally of the United Kingdom or the United States of America. I was only, a slave with the halter put around my neck. I was exploited. I was bled white. All the wealth and 'the economic resources of' India passed into the hands of the United Kingdom. And yet Mr. Churchill and one or two Labour Members of Parliament had the audacity, had the ignominy to say that India must pay for the defence of India during the last war. The perfidy of the politicians and statesmen of the United Kingdom still persists. I have no love for the United Kingdom. On the 26th January 1950, when the Republic of India is declared—I will declare for cutting as under from any association with the Commonwealth countries, particularly the United Kingdom.

Sir, the Drafting Committee has given us a Constitution of 395 articles. It is a Maha Bharata in Constitution and in History. The Constitution which the British Parliament framed had 321 sections while the Constitution we have made has 395 articles. Well, the circumstances over which the Drafting committee had no controlled them to increase the number of articles in the constitution. Perhaps it was like the soldiers running amuck. Therefore they must stiffen and stiffen and amplify so that the Constitution will be understood by everybody. If I may say so, they have done away with the work of the legal interpreters. This Constitution of 395 articles does not need, any Bhashyakars or commentators.

Sir, the machinery that this' Constitution envisages places at the top a cabinet with joint responsibility, though it is qualified by certain emergency powers given to the President as the head of the Government, Sir, I never liked these emergency powers, but they have come in. But the administrative machinery that they have introduced by which the Cabinet will rule over the vast masses of the country is controlled by three instruments of Government such as the administration of justice by an impartial judiciary in the shape of the Supreme Court, the Auditor-General who will test and check all expenditure of public moneys and the Federal Public Service Commission whose selection of officers for the services the administration will accept. It is for our Home Minister to see that any advice given by the Commission is respected by the Ministries. This has not been so in the past, not even during the last two and a half years since we attained our independence.

Sir, the Auditor-General must maintain the financial integrity of the country. He must not allow officials to over-spend or to spend without proper sanction of Parliament. No Parliament worth its name should allow the officialdom to exceed the sanctioned amount of grants and play ducks and drakes with public finance. That has been the practice in the days of the foreign rule. Most of our official, however much they have changed their hearts and are working under a democratic system of Government tuning their policies to the policy of the Congress Government and of the Cabinet, still labour under the old-fashioned idea that an auditor should not challenge their financial irregularities. This must be safeguarded.

Sir, the economic distress which this nation is facing, must be remedied by the Cabinet with the help of the Administrative Heads and the people at large including this House. But how can there be economic self-sufficiency when we have got a Cabinet of 20 or 21 Ministers? Nobody can expect retrenchment or reduction in expenditure in the circumstances. And Ministries will continue to be extravagant. If their number could be reduced, some economy can

be effected. The British rulers ruled India with seven secretaries. Today we have got nineteen secretaries. When this is so, retrenchment must come from the top. Attempts are made by our Cabinet to remove the present economic distress by compulsory savings or compulsory cuts in salaries of Cabinet Ministers and by our compulsory acceptance of a reduction in our daily allowance. But these will not solve our economic problem unless we establish a Government suited to our national economy and national genius. We have borrowed a foreign system of Government. We are carrying on with the old-fashioned British system of government and the ex-British officials are now our trusted advisers. That mentality must change. I hope and I pray God that from 26th January 1950 the indigenous spirit of administration, will come into existence in India.

Sir, I wanted to talk a word or two about adult franchise. It is a welcome democratic principle. But it is a western idea. We have borrowed it. I have accepted it. But I wonder if it can be brought into practice here and if our Ministers can devise means to hold elections under adult franchise by January 1951. Borrowed ideas are not suited to Indian genius. So perhaps five or ten years hence we may have to change our ideology when we find that adult franchise is not practicable in India.

Sir, I take this opportunity to congratulate my friends from the Andhra province for finalising the creation of the Andhra province. They are my next door neighbours and I have been intimately associated with that province for years and years, and I do wish that the Constitution should have empowered the Government to bring this province into being on the 26th January 1950, but I believe it will take some time.

If I look at the provisions of the Constitution I do not like some of them. I do not like article 22 on detention. I do not like article 34 on the martial law provision, nor do I like article 128 whereby High Court Judges could be shunted from one part of the country to another, as my honourable Friend Dr. Ambedkar put it yesterday, for the convenience of administration. It has already been remarked this morning that the separation of the judiciary from the ordinary civil administration is not necessary at present. What was a point of serious complaint, a serious difference of opinion, in the days of foreign rule, is not a grievance today. If all officials are honest, there is no necessity to separate the judiciary from the general administration which would otherwise increase the cost of administration of every province. I am glad my honourable Friend Mr. Bardoloi, is present today. Assam is in very serious economic distress. Under this Constitution, if it is economic distress today, tomorrow it will be severe distress, and therefore there are certain things in which we must go slow.

Speaking of article, 322, the Federal, Public Service Commission, the advice tendered by them should not be overruled by a Secretary or a Deputy Secretary.

We came to some agreement on article 148 and whatever the difficulties, whatever the desire of the administration, the Auditor-General must be the highest authority in audit control of expenditure. If that is not there, there will be chaos as there has been since 1938-39.

I must conclude by saying that certain omissions must be corrected before the 25th or 26th of this month. The National Anthem must be settled, and if I may be permitted to suggest, we must specify also the national dress. I hate to see officials still moving about in ties and collars. Our association with the

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Commonwealth does not entitle anybody to put on foreign dress. They should be debarred from doing it. Parliament should debar by legislation. Nobody in the employment of the State should wear foreign dress.

Another point is the financial reallocation between the Centre and the provinces. Dr. Ambedkar twice declared on the floor of this House that an *ad hoc* Committee on Income-tax reallocation will be announced. I hope, Sir, that you will compel the Government of India to come forward and appoint that Committee on income-tax reallocation which may give real relief to my Friend, Mr. Bardoloi from Assam and will certainly bring some relief to Orissa. Sir, I support the motion.

Mr. President ∴. The House will now stand adjourned till ten o'clock tomorrow morning.

The Assembly then adjourned till Ten of the Clock on Friday, the 18th November 1949.

CONSTITUENT ASSEMBLY OF INDIA

Friday, the 18th November 1949

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.

DRAFT CONSTITUTION—(Contd.)

Shri Ramnarayan Singh (Bihar: General): * [Mr. President, Sir, I have got today the first opportunity of speaking on the Constitution. I thank you and consider myself fortunate for getting this opportunity.

Sir, in ancient times there was a king in our country named Bharthari. He has given the description of the world in a shloka of which the last line I remember, He says:

‘न जाने संसारः किममृतमय किं विषयमः’

No one can say whether the world is full of nectar or full of poison. That is what I want to say. We spent a lot of time, money and energy in framing this constitution and it is nearing completion now. It will now be adopted in full. Some people say that it is very good and have gone to the length of giving Dr. Ambedkar the title of Manu of Kaliyug. A section of the people has this opinion and the other says that it is very bad and worthless. When I begin to think on the lines of Bharthari the idea occurs to me that some time back the British were the masters of this country but now they have departed and the Indians are framing a Constitution for the future administration of their Country. The idea is very pleasing but when I go deeper into the Constitution I am pained to see all that has been accepted for shaping the future administration of the country I know it is a fact that we were slaves for a long time but there was a time when we too ruled the country and had an empire also. At some places the democratic system of government was also followed. But if you look into this Constitution it would be difficult for you to find anything Indian. I would go so far as to say that those of our future generations who might be unfamiliar with the History of this Constitution, would say that it was framed not at Delhi but at London. At least the people will have this suspicion. Some of them would have the suspicion also whether the representatives of the people of India framed this Constitution or whether the British of the White House in London were pleased to frame it, Such a suspicion can arise in regard to this Constitution. Every one can see that it has been framed in English. As I have asked what is Indian in it? It is a fact Sir, that the British have departed but I regret to say that our countrymen have not forsaken the ways of their former masters and that they are ingrained in their minds. I am of the opinion, and this is shared by other people also, that we would experience much more difficulty in bidding good-bye to the ways of the British than we experienced in bidding good-bye to the British themselves.

Sir, on a perusal of the Constitution it appears that some portions of the British Constitution and some of the American Constitution have been included in it. It is a curious admixture and to use an English expression it appears to be a “fantastic mixture of the various Constitutions obtaining in the world.” It is my humble submission Sir, that we have first to realise that the British have

*Translation of Hindustani speech.

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now departed and that we are framing a Constitution for ourselves and we have to decide as to which type of Government we shall include in the Constitution and whether that Government will serve the country or govern it. If it is to govern the country, I would like to say that the time has now come when the world does not want to be governed and needs no government. There is no need of a Government, Mahatma Gandhi, our leader, characterised the previous government, the British Government as a Satanic Government. Sir, I think that there is no government in the world at present which cannot be characterised as Satanic. It appears that at present government means Satan. Therefore our country and our society does not need a government. I moved some amendments in this connection in the beginning but they were not accepted. We need in our country Sevak Mandals, Societies of Servants and not a government. They will defend our country in the true sense. The members of the present government also claim that they are public servants but their work, that comes to our notice, has nothing to do with service. It is the work of the masters. I want to say it in plain words that the country does not now need rulers but servants. It does not need government. It needs service. I want to add that this principle has been accepted all the world over that no man has the right to govern another man. Hitler said that no person other than him could rule the world. But he went down with the whole of his society. In the past too there were Rajas and Maharajas who said that they had the divine right of kings. All these ideologies have now met their doom. Even now there are people who say that they are public servants but act as 'public masters'.

I take up one matter more. We have accepted that some of the public servants of this country will be granted salaries of five thousand rupees, six thousand rupees and ten thousand rupees. Sir, You were present in the Karachi Congress as also many of my friends. I was also present there. We accepted there that the highest salary in our country should be five hundred rupees and no more. The British had fixed the salaries here. But they were here not for service but for loot. The people whom they took with them were made co-sharers in the loot. It is a matter of regret that we, the representatives of the people of India, assembled here, violating our principles and decisions and that of the Congress, pass the resolution that one person may be given five thousand rupees another six thousand rupees and yet another ten thousand rupees. It should be remembered that this is no service. This is government. I want to inquire of you Sir, and of all the honourable Members of the House whether they are aware of the conditions obtaining in the country. Has the situation changed since we passed the resolution that no salary should be higher than five hundred rupees? Has the income of the people increased considerably? It is an accepted law in the world that the salary of a public servant should be in tune with the average standard of living of the people. Ninety per cent. of the people of our country know not what two meals a day are! They somehow manage to pass their lives. Excepting a few people no one gets sufficient food to pull him through. If you provide for salaries of four to five thousand rupees while the people are starving they will ask whether this is the salary of a public servant or of a dacoit of the British brand. I hope I shall be excused for these remarks but I cannot help making them as I am deeply pained at what I see all around me. Even after giving full thought I fail to understand, and the people also tell me, how it can be justified that these people are public servants. Does a servant want that he should have more income than his master, that he should have better food and better residence than his master? The people of India, who are the masters of the country, live in huts but their servants will get salaries of four to five thousand rupees and live in palaces. Is this not a fraud? It should be said in plain words that when the administration of the British ended, we took over the reins and that we now govern the people. The people stand where they were. We are not servants but rulers. We may frame the Constitution as

we like and fix whatever salaries we like but it should not be said that we are public servants. It should rather be said that we are 'public masters'. I would like to tell my friends here that such a proposal regarding salaries and so many of our actions mean that we are paving the way for the Communists. It will be no use taking recourse to repression. By putting the members of the Communist party behind the bars we would not uplift our country. We cannot stave off a revolution by such means. If you want that there should be peace in the country you should remove these disparities. The first thing that I would like to point out to you is that it is not yet too late to fix the highest salary at five hundred rupees. Otherwise you will have to declare in plain words to the world that a few Indians, who were in the front ranks, got an opportunity and began to rule the country like the British. All this does not mean self-government to India. I appeal to you to consider this matter.

I have heard the bell Sir, but I have to say a few things more. Therefore, I may be given half a minute more.

The parliamentary system of government or the party-system of government has been provided for in this Constitution. I would like to say that it does not suit India. Unfortunately there are already too many parties in our country. There have been parties on the basis of the caste-system for a long time. Now if you introduce a new party-system what will be the outcome? If under the party-system you grant franchise to everyone, the result will be that some scoundrels and capitalists will combine and manage to monopolise all the votes. I know that they would not lack associates. Democracy cannot function in such a way. The way affairs are managed in western countries has something of democracy in it but there too there is no real democracy. I hold that the government based on party-system strikes at the very roots of democracy. Under that system only a few persons rule. A few scoundrels and a few capitalists will combine and rule. It is right that in democracy everyone should have a vote and it is also right that an issue should be decided by the vote of the majority. But it should not be necessary that every person should belong to some party or other for arriving at decisions. The party decisions or the directions of a leader should not influence voting. Everyone should be free to vote and should do so honestly. The decision arrived at in this way will be a democratic decision and the country will benefit by it. Otherwise a party leader will give directions and others will vote accordingly. The decision arrived at in this way will not be a democratic decision. It will not be the decision of Panchayat. It is a common saying in our country that Panch is God. He is not a God who has a number of smaller goods under him. It is understood in regard to God that those who sit in His presence are free and dependent to none and that they do not decide any issue and vote on it by looking up to anyone.

Sir, my time is over and therefore I would not say anything more except one thing. As other honourable Members have already said, cow slaughter should be altogether banned by the Constitution of our country. You have only to look at the plight of the cultivators who have to leave cultivation because of lack of oxen.

Regarding Hindi language I want to say that although our South Indian friends have accepted the resolution in connection with Hindi but they entertain the feeling that we want to impose our language on them. I think that this country is my country and all of its languages are my own languages. If I do not know Tamil and Telugu it means that I lack something. In learning these languages I would not be putting anyone under any obligation to me. I shall only be increasing my knowledge. Therefore we should accept that all the languages of the country are our own languages. We had to select one language as the national language. Since Hindi has been selected as the national language it should be

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accepted as our own language and introduced in that spirit. Some of us think that they became learned by learning English. As often as they speak in English, we are reminded of our slavery to the British. We learnt English only for the sake of the British, Therefore we should give it up as soon as possible and should replace it by our national language. To introduce the national language after fifteen years means evasion of the issue. We should do our best to develop the national language as early as possible so that we may not need the English language at all.

Sir, I want to say only one thing more. In all the Constitutions of the world the right of keeping arms is included among the Fundamental Rights. I would like to say that the Constitution which does not provide for this natural right, the divine right of a man to keep as many arms as he likes, is not worth anything. You know that the government has taken upon itself the burden of defence but it cannot defend every person and every home. It can at least allow every person and every family to keep as many arms as may be necessary for its defence. Therefore I submit that a provision to this effect may be included in the Constitution so as to grant the right of keeping arms to every citizen of India. I am pained at the conditions obtaining in the country at present and I hope the Government will take early steps to improve them.

I have taken a little more time and I beg to be excused for the same. I have already said and I repeat it again that these three or four matters should soon be decided. All the sin and evil that is being committed should end. With these words I conclude.]

Shri Kuladhar Chaliha (Assam : General): Mr. President, Sir, at the outset it is necessary to appreciate the work of the Drafting Committee and more so of Dr. Ambedkar in producing a wonderful Constitution in spite of the difficulties with which they were faced. We must also appreciate the members of the Drafting Committee and especially Mr. Munshi who, though he was busy in many matters, always tried to bring about compromise formulae and we appreciate his work greatly and all those silent workers and staff who contributed greatly to the success of this Constitution. Sir, it is necessary to say that, though we may not have produced the best Constitution, at the same time we must say that it is one of the best that we can produce under the conditions prevail. They faced facts and produced one that was necessary. It is said that members of the Drafting Committee were not in the forefront of the battle for liberty but I think that is an advantage because they could look into it dispassionately and produce the one that was necessary. At the beginning of the discussion of the Third Reading we heard from Mr. Muniswamy Pillay that 60 million people of Untouchables were satisfied with this Constitution. That is a great contribution really and if we have satisfied those untouchables whom we have neglected I think we have done a wonderful work. Therefore, my appreciation is due entirely to the Drafting Committee and to those members of the staff who worked hard without having any voice in it and produced the book that is before us.

Sir, I submit, therefore that we have produced a Constitution which, in spite of the fact that it does not come up to those standards which some of wanted, yet, I think under the Directive Principles we have enough of those conditions that should satisfy every one of us. If he is a socialist, there is the Right to Equality to give effect to his ideas. If he is an untouchable, we have the protections to guard his interests. If he is a "Backward" we have also the provisions in

respect of his interests. So in whatever Way we may look upon it, we find that we could not have produced a better Constitution than the one that we have produced.

Sir, in the definition of citizen, of course it has been conceived in the, best of spirits, but there is a subtle loop-hole where we may run around ourselves. If a man comes six months before the 19th July and is registered by the officers appointed by the Government of India, he can be a citizen. But when you apply this to a province like Assam, you will find great difficulty. You would be heading towards disintegration. Therefore, when this is applied, we have to be very careful and we should see that we are not led away by the high principles which have been laid down in this Constitution. Therefore, in spite of the fact that the definition of citizenship has been very well framed, yet, there is a little danger in its application, if you want to apply it in the way we would have it here. We have been receiving telegrams from Assam that we are heading towards ruin. Probably every Member here has received them from Assam, saying that we should apply this principle with a little reservation, that this definition of citizenship should be applied with a little reservation in Assam, and that this Constitution should take note of this.

As regards the Directive Principles, we find that there is a Directive that prevents the concentration of wealth to the detriment of the common man. There is no bar to changing the distribution of wealth, the only bar being that we should, do to it constitutionally. So we have as much as possible in the Constitution and we know that if utilised properly, we can evolve a really democratic government.

Sir, our Constitution is really an amalgam of the American and English Constitutions, with Canada in between. From the American Constitution we have the authority in the President, that he can have the executive to himself, and can appoint his own men to administer the Government. But there is a defect in it as well. And we have the English Constitution in which the leader of the majority party only will be called upon. In the American Constitution the Ministers have nothing to do with the Congress. The Ministers are responsible to the President only, and not to the House. But we have it in our Constitution that our Prime Minister must be responsible to the House. There is also a little defect in that. He can nominate about twelve members. He can also choose his cabinet from among them, there is nothing to prevent him from doing that, from choosing the members from nominated members having special knowledge in science, art and literature and social service. The Premier can do that. But in these days we need not have such an anachronism as "nominated members". We could have had the different societies representing the arts, literature etc. to elect members from among them. But if you allow the President to thus select his Prime Minister and the Cabinet, then we can have an almost entirely nominated set of Ministers. Of course, with the present leaders, there is no such danger. But we have to make a Constitution which is not only fool-proof, but also knave-proof. Some time latter, there may be some people who may be knaves, and we should see that our Constitution is knave-proof also. We may have to change this within the next ten years. At present there is no such danger and the President, so far as we can see for the next twenty years, will be such that he will not misuse his powers. Therefore we should keep guard and see that the Constitution is not worked in such a way that the Cabinet contains only nominated members.

Sir, there is another defect in the Constitution and it is this. It has been said that a Minister is to be a member of the House. He can be a nominated member also. It is not necessary that he should be an elected member. That

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word "elected" has been, omitted, and if it is intentional, then it is a dangerous thing and a flagrant outrage on democracy. I think we should change it to "elected member" and not "Member of the House" as it is worded now. That Member may be nominated by the President and he may be a Minister of the Cabinet too. So I submit that this lacuna has also in future. to be remedied and we should not allow this to go on for a long time.

Then we find that we have been very excessively anxious about the pay and salary of the judiciary. I do not know why we have been so very anxious, as if we were afraid that their Lordships would be annoyed if we gave them less salary or did not provide them houses and so on. I feel Babu Ramnarayan Singh has spoken properly about this anxiety for higher salaries of officers. Of course, we started with the ideal of Rs. 500, but we have seen that changes have come about now and in the present set-up, probably it is not possible to come down to the level which we had put up before our eyes in the beginning. But still, we find that the salaries fixed are so high that sooner or later we shall have, I think, to revise those scales.

There is also another thing. We have provided for the removal of the judiciary by impeachment. But it, is not a very safe proposition. I think the best course would be to select, say, three Judges of the Supreme Court to decide whether a Judge has been guilty of misbehaviour or misconduct or bribery. Otherwise, if we allow this impeachment of a Judge, the whole country would be rather in a ferment, and people will take sides, and in the long run, the guilty man may escape and the honest man be convicted, because of the prevailing passions and prejudices. So I think we should have a tribunal for judging the guilt or otherwise of a Judge, a tribunal formed by the Chief Justice of the Supreme Court. That would have been a better provision.

Then I find that in the State Legislatures Upper Houses are provided for in many of the Provinces. This is rather an anachronism, in these days when everyone is trying to abolish such Upper Houses. We need not have been enamoured with such Upper Houses. These superannuated bodies will not be contributing anything to the discussions. And we also find that in the House of Lords there are very few people who are really bringing in any new thing. As such, my submission is that we should, sooner or later, abolish all these Upper Houses. Even the House of Lords, we know, is almost powerless, and I do not know why at this late hour we should be so anxious to establish these Upper Houses. So my submission is that in the next revision of the Constitution, we should take note of this and try to revise this provision.

There is another little relic of the royalty here, in that when a Bill has been passed by both Houses, the President can send it back with his message for reconsideration. This is really a relic of royalty, and I fail to see why the President should be given so much power or that we should presume him to be so wise as to send back Bills even after they have passed both Houses. This power is excessive, and I think it ought to be taken away from the Constitution, sooner or later.

As I have said long before, I have a great grievance about the Sixth Schedule which has been enacted in this Constitution. This has been framed from a wrong background, that the Tribes think that we are their enemies. The British gave them this idea. They kept the Tribes away and did not let them be assimilated. The British when they left, told them, "The Indians—the Hindus—are your enemies. We are your friends."

They are their friends, because both of them eat beef. They conquered the country from the hill Tribes and as they leave, the sovereignty lapsed back into the hands of the Tribes. The Regional Councils and District Councils have become super-parliaments. That has been a little remedied by Mr. Munshi. But as such I think we are heading to a difficult situation, and if the Tribes cause disturbance to us we have to thank ourselves. But there is one redeeming feature and that is paragraph 21 of the Sixth Schedule which reads:

“(1) Parliament may from time to time by law amend by way of addition, ‘variation or repeal any of the provisions of this Schedule and when the Schedule is so amended, any reference to this Schedule this Constitution shall be construed as a reference to such Schedule as so amended.

(2) No such law as is mentioned in sub-paragraph (1) of this paragraph shall be deemed to be an amendment of this constitution for the purpose of article 368.”

Therefore we should be very careful and it should be amended at the first sitting of the Parliament; otherwise we will be heading towards ruin and there will be so many pockets, so many Ulsters where there will be trouble.

Then, Sir, as regards the name of Assam, I understand from the Honourable the Prime Minister of Assam, Shri Gopinath Bardoloi, that they have agreed to the change of the name and that it was agreed to in the Cabinet. He sent a telegram to the Drafting Committee, I think, on the 12th. But it was not received by them. I trust under section 391 the President, after the inauguration of the Constitution, will amend the First Schedule, changing the name to ‘Assam’. There is another point which I want to mention and that is about the language. The word used at present is ‘Assamese’. Mr. Sahu had given notice of an amendment to the effect that it should be called ‘Assamia’. I hope these slight defects will be remedied in due course.

I must again thank the Members who have contributed to the discussion on the framing of the Constitution which is so well conceived. I should however point out that Members who are finding fault now agreed to the provisions at the Party meeting as well as here and to find fault now does not come in as good grace.

Shrimati Annie Mascarene (Travancore State): Mr. President, Sir, deem it a privilege to speak on this occasion when the House is sitting to pass its final judgment over the Constitution. We are, Sir, on the eve of an historic occasion, when this ancient sub-continent of ours, which had been a laboratory of political experiments of nations in the world, which had been a caravanserai, where nation after nation and sultan after sultan came and went their way, is going to solemnly declare by the sovereign will of its people, a Sovereign Democratic Republic, to secure justice, liberty, equality and fraternity for all its citizens. Never in the history of the world, Sir, has a nation of such magnitude and population, with a history and tradition of non-violence, culture and sacrifice, fought and defeated the mightiest Empire in the world, with a galaxy of distinguished leadership that stands before time like beacon lights, has declared its sovereign will to lay down a democratic constitution. When passion is high after the end of two world wars in history when reason and common sense are at a discount and principles of liberty, equality and fraternity are resounding such intoxicating music in our ears, it is at this time, Sir, that we, the greatest nation in the world, have decided to frame our Constitution.

Revolutions have come into this world and constitutions have been swept away by the tide of emotions generated by the times, like that in Germany, like that in France, like that in Russia, and like that in China. But we are a singular

[Shrimati Annie Mascarene]

race that has stood foreign domination and struggled for centuries and survived by dint of soul-stirring sacrifice without subverting the substructure of national solidarity, we have built a beautiful edifice of democratic structure that will stand before the world colossal.

With experience and wisdom of ages behind us, we have consummated a political experiment which can be traced back to ancient Greece and Rome. It is not for me, Sir, to stand before this House and sing the glory of our achievements. Let us leave it to the judgment of posterity and to the verdict of historians. This is the first instance when heterogeneous interests in a continent State like India have united themselves to form a homogeneous unit in order to lay down rules and regulations that should lead us or guide us in future to live a national life. Like other nations of the world we have peculiar characteristics. We have differences of caste, community and creed: there is the question of untouchability, the emancipation of the Depressed Classes, provisions for the Tribes, for religious and linguistic minorities like Muslims, Sikhs and Christians, their safeguards and protection: then there is the existence of princes and zamindars and the question of their safeguards and protection; then the rights of women—these had to be considered and reconciled and incorporated into the Constitution. It must be said to the credit of the Drafting Committee, with its leadership of erudite scholarship in political science and constitutional law, and thanks to the amendments moved by the honourable Members that an honest attempt has been made successfully to incorporate these rights into the Constitution. Our Constitution is today ushered into the world with a declaration of Fundamental Rights, which can be traced back to the Magna Carta, the Petition of Rights and the Bill of Rights—rights which, have been secured for humanity by the political, philosophers of the 18th century and incorporated into constitutions that have come into existence since then. These rights are also incorporated in our Constitution for all the world to see. Thus freedom of the individual, freedom of opinion, freedom of religion and expression, security of life, liberty and property and pursuit of happiness, have been ensured and secured to every individual in the framework of our Constitution. It is a constitution based on democracy with all the experience and wisdom of ages gone by; only I have to pass a few remarks with regard to the peculiarities of our Constitution.

The framework of our Constitution is modelled after the American Constitution, that is a federal constitution in which power is distributed between the Centre and the local governments. It is not new to us. It is based on the Swiss constitution which had been adopted by America, followed by Australia and Canada and today tried and adopted by the greatest democratic nation in the world. But the similarity ends there. Our Constitution that has got the shape of the American constitution differs from it in regard to the executive powers of the President. Unlike the American President we have our own President advised by a Council of Ministers with cabinet rank, parliamentary responsibility and ministerial obligations; so much so our Constitution is a composite constitution with the rigidity of a written constitution but with the conventional adjustments of the British constitution. Side by side with rigidity we have also incorporated the separation of powers which is as rigid as it is in Any other constitution based on democratic principles. Our judiciary with its original and appellate jurisdiction and with the right of interpretation of the constitution differs from that of America, where the judiciary has the right of judicial review of executive and legislative activities.

Many an imperfection has been ascribed to our Constitution by some of my learned friends. They say that it falls short of our ideals and principles. May I invite their attention to the constitutions that had been framed hitherto by democratic countries in the world? Look at the American constitution. Look

at the time it took to frame it in its final shape. Had it not to undergo a series of changes and then take its final shape after the Declaration of Independence, eleven years after the Declaration of Independence at the Convention of Philadelphia? Had not the constitution of Canada to go through so many changes, before it was finally settled at the Quebec Convention? And since then has it not been undergoing changes till today? Look at the Constitution of Australia. Had it not to go through many changes and wait till the Convention at Sydney? It had to be shaped and reshaped, modelled and remodelled in the cauldron of public opinion at Sydney. There was the constitution of South Africa, a constitution meant only for the White race discriminating against the natives. Even that constitution had to wait till 1943 to take its final shape. If you have a cursory glance at the constitutions of other democratic countries before us, you will find that France started its constitution with the storming of the Bastille and it had to wait for 100 years before it could frame its constitution; meanwhile it swung between dictatorship and republicanism. Is there any other nation in the world today which deliberately elected a Constituent Assembly which sat for three years continuously and framed its constitution? May I invite the attention of my honourable Friends to the fact that we have evolved a model constitution based on democracy and that constitution will stand the stress and strain of times like the American constitution till it proves to the world that a continental country like India can have a democratic constitution and work it too to the glory of all the world.

I come now to the next point, that we have too much of centralisation which ignores the powers of the States. We are at the advent of democracy. Democracy has got a tendency to let loose fickle emotions and disruptive forces. In the circumstances without a strong Centre I do not think we can have a successful democracy. We are at the beginning of nation-building. We have to survive as a nation. The question is the survival of a nation in a world of international conflicts. If that is so, we have to decide in favour of a strong Centre. If a party is to have a leader, should not the nation have a strong central government? America decided to have a strong central government. Canada decided to have a strong central government. Mr. Macdonald, the leader of the constitution, said that all the centrifugal forces should be controlled and therefore a strong Centre was necessary. If at the beginning of a state a nation is faced with so many political, economic and social problems there should be a strong Centre, so that power could radiate through all the parts. The Centre should not be so strong as to kill the autonomy of the local governments. But we have not got any such power concentrated in the Centre to kill the autonomy in the States. Therefore, this allegation that the Constitution is more centralised has no foundation. Of course, articles like 365, 371 and 324 look dictatorial, but when you look at the gust of emotions and the centrifugal forces set adrift by the advent of democracy, you will find that for the sake of political welfare and security of law and order, there must be a strong Centre, so that the nation can survive. There are provisions in the Constitution to amend it and if the Centre is too strong we need not fear because when the nation has attained full stature and we can stand on our own legs, we can amend the Constitution and distribute powers equally.

With these words, I thank my friends for giving me a patient hearing. Let us all wish success to this Constitution and let us go home with a feeling that we have done our duty to our country and to the people.

Shri Gokulbhai Daulatram Bhatt (Bombay States): *[Mr. President, if we say, something about the Constitution which has been prepared by us and which is going to be accepted by us, it would mean two things. One is that we are praising our own work. And if we start pointing out the defects in this Constitution we might produce an impression that the Constitution must be

*[] Translation of Hindustani speech.

[Shri Gokulbhai Daulatram Bhatt]

worth nothing since even we who had made it were discovering defects in it. We have devoted a very considerable time and spent quite an appreciable amount of our energy and money for the perfection of this Constitution. The learned members of the Drafting Committee laboured hard—and they are men of learning as is clear from the manner my learned Friend Shri Kamath applies to them the epithet ‘learned’ every time he makes a reference to them, and I may add that I must rely on his judgment since he cannot but be very learned indeed when he starts calling others as his learned friends—and so as I was saying the learned members of the Drafting Committee have laboured hard in the preparation and for the passage of this Constitution. I must also thank you Sir, for the patience and the skill with which you have presided over the deliberations of this House and particularly the patience shown by you in the face of the lack of Quorum in the House. I also congratulate our Constitutional Adviser Shri B. N. Rao for his valuable advice given by him. The members of our Secretariat had also to work under difficulties and strain that were not in significant and they also deserve our thanks. It is as a result of collective labours of all that this Constitution has come before us in the form that it possesses today. It would be unbecoming for us if we now start criticising or condemning it. In a way those who drafted it had no other way but to follow the models that existed elsewhere. They have tried to prepare for us a very attractive cake which has been properly and thoroughly baked. There is in it an admixture of a number of elements—of wheat, of gram, of barley and of other cereals. The cake we have now got we are out to praise and we are engaged in that task at the present time.]

Shri S. Nagappa (Madras : General): *[We will now begin to eat the cake.]

Shri Gokulbhai Daulatram Bhatt : *[I am not going to institute any comparison between the cake that we have prepared and the biscuit and the cakes of the other countries that is to say I am not prepared to examine as to how far our Constitution stands a favourable comparison to the Constitutions of other countries. The fact is that no judgment can be passed on this question unless we have begun to eat the cake and digest it. Until that is done we cannot definitely say as to what substance this Constitution contains. I therefore submit that it would be much better if we abstain from passing any final opinion about the Constitution until that time and it is precisely for this reason that I would not indulge either in a praise or a criticism of this Constitution in the House today.

When the Draft Constitution was brought before the House for the first time I observed that it was like a bunch of flowers that had been put together after having been brought from different places. I had proceeded to observe that it contained paper flowers and in some parts roses and also a rare jasmine flower. Thus it contained flowers of different kinds and characters. The bunch that is now before us is one which we had put together ourselves, and I can dare say that some of the flowers that we have put into it have fine and pleasing smell. But we all know that in this world we need all types of things because if it was full of all roses alone and no thorns man would lose his mind because he cannot bear so much good in his life at one time. I therefore believe that to reduce the excess of the smell of the flowers in this bunch other articles have been put into it.

If any friend, however, feels that the Constitution has become too bulky as it contains 395 articles and that it should have been much smaller and should not have contained more than 100 articles, I would say that that may well have been

*[]Translation of Hindustani speech.

but for the fact that our friends here are scholars and men of learning. On the one side scholars like Pandit Naziruddin as also my Friend Pandit Kamath who have been puzzling their heads to improve this Constitution.]

Shri H. V. Kamath (C. P. & Berar : General): *[I am not a pandit.]

Shri Gokulbhai Daulatram Bhatt : That may be. But I as you are very fond of Geeta and worship God, therefore, I am referring you as a pandit. So these pandits were seeking to tell us always that the Constitution is full of lacunae. But for their criticism we could have made this Constitution quite flexible so that we could have adapted it to the changed conditions. But no one here was willing to permit us to frame a flexible Constitution because none had a confidence in the framers and everybody was trying to point out that a particular word could also be construed to have some different meanings than what was thought to be its meaning by the Drafting Committee. It was urged that this was a matter for the interpretation by the courts and by the lawyers and the Constitution will be interpreted by those authorities. Therefore we were compelled to frame this Constitution in such details and at such length in order that our people may not have to suffer from lacunae in it.

As I was observing we have framed this Constitution after unravelling very difficult and intricate problems. There were occasions when all of us were afraid that violent differences may not develop among the members in regard to certain matters that had to be provided for. Thus there was the question of the name of the country, the official language of the Union and the conditions under which the Union or the States can acquire immovable property. These questions as also similar other questions had to be tackled by us and I believe had been wisely tackled problems under the leadership of our leaders. We disposed of all the points of difference by means of following rule of the golden mean and the path of compromise. I precisely use the word disposed of because I know that many of those who had any interest in the language question and who were insistent that a particular policy should be adopted could not have felt fully satisfied by what we decided. I mean such of my friends as Honourable Tandon Ji must have been feeling that all that was desired had not been done. But I would humbly submit that nothing in this world is perfect though all of us are trying to reach perfection. But once we have reached the goal we would ourselves have become so perfect that we would require nothing more for ourselves. Such is the view that Upanishads have advanced. But I do not want to press this point any further. I would however like to repeat and reiterate that it was quite in the fitness of things that we sat together and solved all our questions by means of compromise. If we had failed to solve these questions even after having devoted so much time I am sure the world would have laughed, mocked and jeered at us. If I could I would have certainly liked that the name of Mahatma Gandhi and of the martyrs under whose grace. We have been able to achieve what we have actually done should have been included in the Preamble. But our leader Pt. Jawaharlal Nehru and our elder statesman Sardar Patel advised us not to insist upon this and we quite acted on their advice. But even though the name of Mahatma Gandhi and of the martyrs whose sacrifices have enabled us to see this day and secure our independence does not occur in this Constitution yet I pay my homage to them and praise their services as a result of which we are enjoying our life in this atmosphere of independence and freedom.

When I examine this Constitution from the point of view as to how far the ideology of Mahatma Gandhi finds place in it, I begin to feel that it would have been much better if we had provided for our work being done mostly by Panchayats. I give very great importance to this aspect of the problem, and whenever I have in occasion to speak here or elsewhere I have urged the acceptance of the institution of Panchayats. I know that we had tried to secure the right of adult franchise and had struggled to secure it and had demanded that all the elections should

*[]Translation of Hindustani speech.

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be held on this basis. At one time however we had said that our President would be elected on the basis of adult franchise and we had as a matter of fact accepted in principle that proposal. But later on we began to feel that this is not possible because on the one side Prime Minister would be elected by means of adult franchise while on the other the President would also be so elected and if any difference of opinion occurred in these two officials who had been elected by the same body of people it would be difficult to overcome those differences. Therefore we felt that reality and practical considerations demanded that we should give up our insistence on the direct election of the President and agreed for his being elected in some other way. We agree to this because we felt that our representatives at the Centre and in the Provinces would be elected on the basis of adult franchise. But I have my difference even in regard to this matter for I am not sure as to how far we will be able to put this in practice. Even then I do not mind this being put to experiment once at least, so that we may learn its lessons. We can if we so feel make change after we have once had an experience of adult franchise. But it is my belief that we would have to reach the conclusion after experience that our electorate should consist of the village panchayats and that persons elected by them should be considered to be popular representatives. I do not want however to go, into more details with regard to this question because I have to say all that I have to in a few minutes that are now at my disposal.

The question of language had been raised here. Seth Govind Das Ji observed that no harm would have been done if this House had passed the Constitution in Hindi even if that meant that this House would have had to sit for a year more. I am just giving the substance of what he had said. . It is possible that that may be his belief, and I do not also question that it would have been in the fitness of things if our Constitution had been drafted in Hindi. But I am not prepared to accept that it would have been wise for us to wait for a year more before our Constitution came into operation. It is my belief that the conditions under which we are living today are reflected in this Constitution, and also think that it could not have been better than what it is under these conditions. If we had taken more time we might have given our critics the opportunity to assert that we were simply wasting time and money and delaying the matter in order to pocket as much money of the public as we could. They might have urged that we were simply reducing this Body into a mockery while sitting here in the name of democracy. I believe that we were not ready to invite this criticism and I think it is quite in the fitness of things. that we are now passing this Constitution in this quick manner.

I have an observation to make in regard to the language question, in so far as it involves the question of regional languages. I was not present on the day when the language question had come for consideration before the House. But my elders and my other friends advised me not to raise this question later on in this House. But I cannot refrain from observing that if Gujarati, Marathi and such other languages can all be considered regional languages there is no reason why Rajasthani which is similar to them and is spoken by one and a half crore of people could not be considered as a regional language. I know that it has several dialects. But all the same no one can say that its history begins in recent times. As a matter of fact Rajasthani had been in use for several centuries. I am also aware that the Rulers have been using this, language and that when they correspond with their fief holders, they use it as a medium of correspondence. All these reasons favour its being accepted as a language by itself. It is therefore my humble submission that a place also should be provided to Rajasthani as a regional language and I am sure my friends here would consider this question whenever it

that this language deserves to be recognized as a language by itself. I do not want to create assertion because that would mean giving long citation but I do insist that this language should be given a place along with other regional languages.

Several friends have stated here that practically all powers have been surrendered to the Centre. I however, believe that the conditions prevailing today are such that unless we vest almost all the powers in the Centre for at least ten or fifteen years it would not be possible for us to undertake any constructive activities. The reconstruction that we want to put in can be carried on only if we remain under the control and direction of a common Centre. This I submit is a historic necessity and any other course would be to walk in the clouds that would carry us nowhere. We must keep our eyes fixed to the solid earth. We must also examine the nature of the ground and give due consideration whether it has rocks or land in which trees can be planted. We must plan all our activities according to the kind of resources that we have today. That is to say the type of land that we have, the seeds we have to sow and the water that is available to us for irrigation. My submission is that in view of the totality of the conditions that exist today it appears to me very necessary that we must remain under a common Centre. My Friend Mr. Hanumanthaiya had asserted yesterday that it was only during the discussions that the proposal was introduced that the States Union must be under the control of the Centre for a period of at least 10 years. I do not want to go into the history of this proposal. I can say that when the Rajasthan Union had been formed my friends including myself had agreed, during the negotiations that were being conducted between the States Ministry and ourselves, that we shall be remaining under the control of the Centre. The circumstances prevailing in Rajasthan are rather peculiar and in view of these peculiar circumstances we felt it right that the Centre should continue to control us. I believe that the same reasons apply to the other States also and it is on account of that that a provision has been made with regard to the States in this Constitution. It is laid down in that provision that the States and the States Union shall be subject to the control and the supervision of the Centre. The President however has been authorised to abolish this control if he considers that the same is not necessary in the case of any particular State. I therefore submit that there is nothing in this provision to which we can take objection or as a result of which we should lose our nerves. I on the contrary welcome it and I can say that I had been responsible for its formulation and acceptance. Shri K. T. Shah had observed yesterday that there are too many restrictions in regard to the citizen's rights. I would have asked if he had been present today—but there he is—so may I ask him as to the country in which no restrictions have been imposed on popular rights in public interest and for maintaining morality. I would like to know whether there is any country in this world in which there is no restriction whatever on popular rights. So far as I know in every country restrictions of one type or the other have been considered to be necessary. For example it is everywhere necessary that one should exercise considerable restraint in the exercise of his freedom of speech in order that public order may not be disturbed. If we examine in this light the provisions in our Constitution relating to popular rights we find that the rights which the people would be interested in using and enjoying can be secured through law courts. So far as I am concerned I believe that the rights granted are quite extensive and general and that every one of us should feel contented with what has been provided. But if we go a little further than this I would have now to hurry up as I have very little time at my disposal, we would find that a peculiar gift that we have secured is that the rulers of Indian States who had acceded to the Union in regard to three subjects alone have now gradually completely joined us. Credit for all this goes to our elder statesman Sardar Saheb who with his skill succeeded in persuading these rulers to join us and now they are with us. Notwithstanding that we have our is brought again before this House. I submit with all the force at my command

[Shri Gokulbhai Daulatram Bhatt]

own constituent assemblies and our separate States Unions, we have now decided that the Constitution of all the different State unions would be of the same pattern, and it is with this view that we have introduced a number of provisions in part seven which would be applicable to all the Indian States Unions. I would like to say that this is no mean achievement. But I do not think that it is necessary for me to say anything further in regard to this question. I however, know that the whole world will have to accept one day that what could not be brought about within 100 or 200 years that was achieved by our leaders within a very short space of time. The 600 and odd States which had their own separate existence have all become one. I do not know in what words I should express my feeling with regard to Sardar Saheb who has been responsible for all this. All of us of course praise him. He has acted with great foresight and skill in the matter of solving the problem of the States. I may add that he had solved the problem of Rajasthan also with great tact. The problem of Sarohi had been brought before us the day before yesterday and I had placed before the House what the people of Rajasthan and Sarohi demanded. I have constantly reiterated at places that Sarohi should be included in Rajasthan. But I also believe in another course of action and it was that the whole matter should be left to Sardar Patel to be decided by him in his discretion after we have acquainted him with all the circumstances. I think that would be a wiser and a more practicable course as the statesman of ours, our Sardar has solved many a problem which nobody else could have solved. It appears to me to be proper that the problem of Sarohi should also be solved by him, and I believe that all our friends from Rajasthan would put the entire case before Sardar Patel. There had been a time when Sarohi had been merged in Bombay. We felt at the time that we should see Sardar Patel in connection with the portion that was being merged in Bombay and should acquaint him with our feelings, with the feelings of Rajasthan and with the feelings of Sarohi with regard to this matter, and that we should entreat him, to favourably solve this matter. I am confident that his solution would give satisfaction to every person for he had always been able to give complete satisfaction to all concerned and I hope he will be able to do so in regard to this question as well.

I would not like to say anything further in regard to the other aspects of the Constitution because I have no time to do so. This Constitution as I have already stated has been framed in such a way as will permit the President to make adaptations and modifications in it. And we also would be in a position to bring forward its amendments for registering any particular change. Our Constitution thus contains the type of provision I have suggested. It is my fervent hope that our people should very quickly move forward for the reconstruction of the country and for the use of the new Constitution. It is only then that our country would be following the proper course in the matter of reconstruction. Before I conclude I would like to reiterate my thanks to the Members of the Drafting Committee and to the other Members who have put in such labour.

Pandit Lakshmi Kanta Maitra (West Bengal: General) : Mr. President. Sir, I must frankly admit that, if I speak today, it is not because I have any contribution to make; for one thing this is not the stage to make any contribution to the debate or to any of the articles; for another, I am not in a mood to do so. But, Sir, I could not but fall an easy victim to the human, weakness *viz.*, to join my voice today, one of the most memorable days in the history of modern India. As an humble servant of this country, who has devoted a goodly portion of his life to activities in the parliamentary or legislative sphere, I consider it one of the proudest days of my life to be standing here today and to be able to associate myself with the motion for passing this Constitution of free India. Mr. President, it seldom

falls to the lot of any man in any country to have this opportunity in his lifetime. In India at any rate I cannot visualise a thousand years back from now when such an occasion ever arose. It is a memorable occasion, a momentous occasion, a solemn occasion. Sir, as I rise to speak today, memories, bitter and poignant, come crowding to my mind. Two generations of men before us fought and bled for the freedom of this country. Many of our illustrious sons in the parliamentary sphere ploughed the barren sands fondly hoping, by tinkering with this measure or that to bring about some form of amelioration from the hands of those who controlled the destinies of this country. They are dead and gone. They could not see the full fruition of the work they began. Their mantle fell on us. Not only in the legislative or the parliamentary sphere but in every other important sphere our men carried on relentless activities for the freedom of the country. Some of us have survived to see the materialisation of our dreams. Others have passed. I believe, not into oblivion, and a grateful nation should always remember on an occasion like this that but for them it would not have been possible for us to have anything to do like the framing of a Constitution today (*Hear; hear*) Mr. President, I consider it my first duty today to pay my humble tribute to the memories of the great and patriotic sons.....

An Honourable Member : Daughters also.

Pandit Lakshmi Kanta Maitra : Sons include daughters—sons, daughters, mothers, fathers, brothers and sisters, all who have contributed their mite to the building up of this independent nation. Today I gladly join the chorus of approbation of the services rendered by the Drafting Committee in which we have some of our most intimate and tried friends. I congratulate them on their achievement. I also want to record my appreciation of the work done by the Joint Secretary, Mr. Mukerji and the other members of the staff who have collaborated with us and made it possible for us to have this Constitution. Let us not in our admiration for the people in the limelight forget them. “They also serve who stand and wait.” Above all, Mr. President, may I strike a personal note and I believe that the statement that I will make will find a responsive echo in the heart of every honourable Member here, that the whole House if not the whole nation, is beholden to you, Mr. President, for the very admirable way in which you have regulated and guided the proceedings of this august Assembly. Many of us felt, not I, many of us had the feeling that with very little experience in the field in which you were suddenly called upon to serve you were an uncertain entity. I wonder, Mr. President,—it is no flattery to you when I say I wonder—how you could so admirably, with so much tact control the deliberations of this august Assembly. You have given no cause to anybody to grouse; you have never stifled discussion; you have allowed everybody full latitude, free scope to those who had an exuberance of steam about themselves, to let the steam off; to those who have particular delight in chattering, you gave them chances to their hearts’ content. I know and many a Member knows that sitting silently on the seat you have been witness to many things in this House which you perhaps did not like, but yet you held your hand back. We appreciate that and what I as an humble Parliamentarian can appreciate most is that though sitting in the Chair, there have been occasions when you felt yourself called upon to intervene; when you found that the House was taking a wrong an erratic step, you stayed its hands, you asked it not to rush on but to go slow and ponder and I know that on every such occasion real benefit has come out of your advice. This is an aspect which the House will not do to forget. It is perhaps worth mentioning that the Members of the Constituent Assembly also have their share of credit; they also deserve recognition in the country. Members have been called out to Delhi, where they have had to stay for months on and into difficult circumstances in total disregard of their private business. Sir, this is not in deference to an empty convention that I say all this; I sincerely believe that but

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for this joint enterprise, this collective enterprise of all concerned with you, Sir, at the top, it would not have been possible for us to achieve success in this stupendous undertaking.

I will now refer to one or two points regarding the Constitution. There has been a constant criticism here and elsewhere that this Constitution has been a botch-potch of all manner of institutions prevailing in other countries. Yes. Speaking theoretically it is correct. There has been an amount of eclecticism there is no doubt about that; we could not help that. Who could have helped that in this country? Who in this country had had the experience, the traditions of a free country or the taste of freedom? We had not breathed, we could not breathe, the free air of freedom. We could not develop our own national and political traditions and for our ancient traditions we had to fall back on our ancient *shastras* and ancient lore. Therefore, we acted properly in my opinion in not rejecting the lessons of history recorded in the Constitutions of other countries. We had to pursue the policy of 'pick and choose' to see which would suit us best, which would suit the genius of the nation best and I am sure we will not have to regret this choice.

Another criticism about this Constitution is that it is a huge document. Enormous amount of extraneous matter, unnecessary matter has been pressed into it. Perhaps there is some truth in it also; but is it realized that you have drawn up a Constitution for 340 millions of people? Look at the magnitude or the size of your State and its people. Has it any parallel in the world? Has any other country, any other State in the world got such a multiplicity of problems, of such complexity and diversity as we have got. Therefore, in the nature of things, this was inevitable and I make no apology for it. I do not say that this Constitution embodies the height of wisdom, political wisdom; I do not say that, I do not claim; you do not claim, nobody claims, neither the Drafting Committee nor any Member of this House, that this Constitution is perfect for the simple reason that it is not for human beings to be perfect and that a human Institution must of necessity be imperfect; but the society is not a static one. We are passing through a dynamic age, dynamics forces are at work. What we have provided today may have to be scrapped a couple of years hence, nobody can say. Hence, let us subject it to the test of time. Let us see how this Constitution works. It will be perfectly open to the future legislators, to the future generation, to those who come after us to make any, changes that would be justified by the needs of their time.

It has been said that this Constitution has been cumbered with restrictive provisions, that the Fundamental Rights that have been conceded with one hand have been taken away by the other. In our zeal for criticism of the Constitution, which is our own handiwork is it realized how much we have achieved? Let us ponder over what we have provided in the Constitution as Fundamental Rights. Many of them are justicable. Let us not forget that. We have provided, among others, for liberty of speech, thought, action, association and all that is necessary for intelligent and civilized intercourse in this world. No doubt these have to be hedged round by certain restrictions, otherwise the very liberty would degenerate into licence; it will not be liberty at all. Remember the famous line of the great poet: "To me (the unfettered) the unchartered liberty tires." To some others chartered liberty tires. But in the interests of the very security of the State, as also for the greater and fuller enjoyment of liberty, civil liberty, these restrictions are necessary; however paradoxical it might seem, it is true.

Sir, we have completely banished from this land the curse of untouchability. We have by Statutory provisions broken as under the barriers that divided map and man. let me hope for all time. Is it a mean achievement? We have

completely destroyed separatism from this country. Separate electorates we have removed. Reservations except for the genuinely backward classes, which is essential at the present stage, we have removed. We have tried to place equal opportunities for development and expansion, for the flowering of man into manhood. We have done all that. Is it a mean achievement? We have secured for the country the right of protection of the language, the script, the culture and everything which a particular part of the community wants to preserve for itself. These are some of our solid achievements. On top of all, the hitherto neglected under-dog has been given a dominant voice in the governance of this country by the grant of adult suffrage. I find my honourable Friend Mr. Kamath smiling; I do not know if he is smiling assent or dissent to my observation.

Shri H. V. Kamath : I was not smiling at your remark; I agree with you.

Pandit Lakshmi Kanta Maitra : I thank you; at least on one occasion, my Honourable Friend has agreed with me. Mr. President I was asking the House and through it the whole country to consider what a revolutionary change we have introduced in this country. I ask them to understand the implications of full adult suffrage in this land. These are our solid achievements.

But, our detractors would say, you have destroyed civil liberties. Yes, we have destroyed all chances, as far as is humanly speaking possible, for degrading liberty into licence. That is true. These restrictions, at any rate for the period of transition, are necessary in my humble opinion, After the sudden withdrawal of the British power, in this country, his vision should be purblind who does not see the things that are shaping, the mounting violence and lawlessness everywhere. Who is going to use these powers? Not an alien force; but your own chosen representatives, representatives of the people, who would be chosen by the common man. That is a fact well worth considering. Let me fervently hope,—not only hope, it is my firm conviction—that these exceptional reserve powers will not have to be used too often. They will perhaps remain in cold storage. I earnestly hope that the weapons that we have forged for the protection of our hard-won freedom will go rusty and dusty in our armoury and will fall into desuetude, if only we realise our responsibility. I do not understand a democracy which simply means all rights and privileges for the people and no corresponding obligations to the State. I find it commonly believed that for the common man in the street it is only to receive and not to give. This misconception of democracy or, should I say, this prostitution of the sacred phrase, should be guarded against and unless that is done, unless those who are in charge of putting this democracy into action, could fully make the people understand it and act up to it, this Constitution will be little worse than useless. For, after all, I do not believe that the virtue or merit of a Constitution lies merely in its wonderful draftsmanship or in the provisions that you embody in it. No doubt, they are important in their own way. But the success of democracy in a country depends upon the joint, collective endeavour of all concerned. In the first place, the provisions that you have embodied in the Constitution must be implemented in letter and in spirit, more in spirit than in the letter. No draftsmen in the world can draft a Constitution in so perfect a way that all the social and political ills to which a man is subject, would be abolished in a day. No cobbler in the world can make a pair of shoes which would enable a lame man to walk well and fast. No optician in the world can prepare an eye glass which can make the blind or the purblind see clearly. No tailor can make an ugly person look handsome and beautiful. So, I say the success or failure of this Constitution would lie in the hands of the people who work it, and it is on them that its success or failure in the ultimate analysis depends. Therefore it is that this is an occasion, which I said was a memorable occasion, an occasion for exultation, perhaps of exaltation but certainly of exhortation

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This is an occasion for self analysis, for self-examination. We have to see that if we want to implement whatever we have provided in this Constitution, if all that we want to achieve is to be achieved, then we must start here and from now to create an atmosphere for it; we must without delay bring about the conditions necessary for the proper evolution of a secular democracy in this country. You have given adult suffrage to your people. If you do not set about with all earnestness to completely remove illiteracy from the people, then, this grant of adult suffrage instead of being a boon would be a boomerang.

All the nation building departments should be attended to immediately and no excuse of shortage of funds or any other cause should be allowed to stand in their way, if the democracy as envisaged in the Constitution is to succeed. If this gigantic experiment is to succeed, I would appeal in particular to the servicemen to take note of the times. In this House when the constitutional guarantees were embodied for a class of the servicemen, there was a considerable section inside the House and outside who grumbled and grouched. This has created considerable heart burning among those sections of the services for which no guarantee was provided. I do not object to guarantees being given; I do not regret that the fate of these servicemen has been given some security in the Constitution. The services constitute the back-bone of every Government but we in return must expect that all the servicemen who have been guaranteed a secure tenure should at least give us a moral guarantee that they would rise equal to the occasion, and that they on their part would act in a spirit of service, service to their country, service to their fellow human beings who are their own kith and kin and who are their ultimate masters; and not merely service to self. There should be no jockeying for positions inside the Secretariat or in other spheres. Let us be assured that all services will co-operate in the fulfilment of the great undertaking we are about to enter upon and in this, may I say, Sir, that everyone of us has a responsibility to discharge. The future legislators, the future Parliamentarians, the future Ministers, the people who would be called upon to operate this Constitution, to administer the Government of this land,—they should be the first to set an example to the rest of the country by their selfless devotion, by their hard and earnest endeavour to implement the spirit of the provisions of this Constitution. If that is done, I have every reason to hope that we shall be able to make this country worthy of its great past. We who have been inheritors of ancient renown, could then stand up before the country, before the bar of history and say, we have done our part in our humble way,—with all our faults and failings; the future belongs to those who come after us.

Mr. President, before I conclude I would like to impress on the House the spirit of the Preamble with which we begin our Constitution. I think it is the most solemn and the most magnificent piece of declaration that can be found in any Constitution. Let me draw the attention of the House to it before I close. I will not read the whole of it but as I was listening to the critical speeches of my honourable Friends, I was reminded of its noble message:

“We, the people of India, having solemnly resolved to constitute India into a sovereign Democratic Republic and to secure to all its citizens:

Justice, social, economics and political;

Liberty of thought, expression, belief, faith and worship;

Equality of status and of opportunity; and to promote among them all;

Fraternity assuring the dignity of the individual and the unity of the Nation.”

Great words these, solemn words these—let us take it as our Manthram and with these two Manthrams, this Preamble and Vande Mataram—go ahead.

The Honourable Shri N. V. Gadgil (Bombay: General): Mr President, I remember that nearly three years ago we started the deliberations of this Constituent Assembly. In the course of these three years many things have happened and one great thing that may be noted about the Constitution that is now about to be passed is that the experience gained in the course of these three years has been written in the clauses of this Constitution. That will only show that those who were responsible for drafting of the same have not been mere academicians or mere lawyers working in an atmosphere of the cloister. As has been well said that so much has been accomplished and so well in such a short time that compared with the attainments of other nations in Constitution drafting, there is nothing in this of which one can be sorry but there are many things about which we can be reasonably proud. The Third Reading is hardly an occasion to subject the provisions of the Constitution to a critical or constructive analysis. But in as much as the Constitution has been criticised here as well as outside this House by a number of persons and parties, I am rather inclined to review the main provisions which are incorporated in this Constitution.

For this purpose I have singled out two parties in the country—the Socialists and the Hindu Mahasabha. Both the parties have put down in writing their ideas about the Constitution for this great country. One is published under the title—‘Draft Constitution of Indian Republic’ and it is red in colour which is rather the monopoly of the Communists with something different by way of an emblem. The other party—the Hindu Mahasabha has also published a book called the ‘Constitution of the Hindustan Free State’. I went carefully through both these documents and I find that there is agreement on the main features of the Constitution that ought to prevail in this country. Lord Bryce has defined “Constitution as the form of political society organized through and by law, that is to say, one in which law has established permanent institutions with recognized functions and defined rights. It may be a mere collection of general principles according to which the powers of the Constitution, the rights of the governed and the relations between the two are adjusted.” It is therefore to be seen what permanent institutions in the sense in which any political institution can be permanent, are embodied in this Constitution. A modern constitution can be tested from five points of view:

1. The nature of the State for which the Constitution is provided,
2. The nature of the Constitution itself,
3. The nature of the Legislature,
4. The nature of the Executive,
5. The nature of the Judiciary.

Now in this Constitution the nature of the State is Federal. I doubt whether there is a single individual either here or outside or a party here or outside which has stood or even stands for a completely Unitary State.

It is impossible to govern a country so big, with so many traditions and with such a variety of cultures with about two hundred and twenty different languages and to bring them in one administrative unit in the sense that there would be one unitary State, one legislature and one executive. After all, Sir, every Constitution represents the accumulated wisdom of the past and also embodies some elements of experiment in the constitutional sphere. It was not possible, as was well said by my predecessor just now, to write on a clean slate. In the course of the last hundred and fifty years, and more particularly in the course of the last forty years,

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this country has been accustomed to certain political institutions, and it was not possible to depart violently or substantially from the political trends and tendencies already prevalent in this country. It was, therefore, clear that the nature of the State would be federal—a point on which there is perfect agreement between all the parties in this country. The difference, only comes here, whether in this Federal State the Centre should be strong or should it be weak. Now, even in this, both the parties, the Socialists as well as the Hindu Mahasabha, are agreed that the Federal State, or the Centre, must be strong. I think, therefore, that there is nothing to be ashamed of the provisions—even taking into consideration the latest addition—are such that in the light of experience gained during these three years, it could not be said that the Centre has been made unnecessarily strong. It has been the experience of history that when the unifying influence of nationalism is felt, the emphasis is in the first instance on independence, and secondly on democracy. As I have already stated, in view of the difference in outlook, in culture, in language, and in history, we have yet to go a long way before we can say that the Indian State is a perfect unit in the sense that it is one solid and well integrated State. There are still fissiparous tendencies, there are still tendencies, both individual and provincial, to get out when something unpleasant is done, and the necessary loyalty still lacks that measure of intensity which we find in other Federal States. In fact, when we started three years ago, our greatest problem was how to bring in the several States which suddenly became free and sovereign also. But gradually the unity of this country has been built up and in order to see that it is perfectly consolidated, that it is placed beyond the danger of any fissiparous tendencies or disintegration, I still think the necessity for a strong Centre is there, for at least ten years to come. From that point of view, some provisions which enable the Central Government to supervise or control or direct certain affairs or certain spheres of administration in the provinces are all to the good.

Now, Sir, the second test, as I have said, is the nature of the Constitution itself. Here again, we cannot leave much to convention, and hence the approach has all along been to embody, not merely general principles—a step which has been taken in many other countries—but to incorporate many things and not to leave at the initial stage of our journey towards freedom, important matters to convention. The accusation has been levelled against this Constitution to the effect that it embodies too many details, that much of this could have been avoided. This is a point on which many will agree. But at the same time, the experience gained in the course of the last few years dictated that this was rather a dangerous affair, to leave many things to mere convention, and hence the necessity of the new provisions that have been embodied in the Constitution.

The great objection against written constitutions is that it is very difficult to change them. In this respect I think the provisions that have been finally adopted are neither so elaborate as are in the Australian constitution or the constitution of the United States of America, nor as easy as those in the English Constitution. There must be some distinction in amending an ordinary law and an organic law. Undoubtedly this law of Constitution as the very name suggests, is an organic law and any change in it must not be done with the same facility or shall I say, the same light heartedness as any change in the ordinary law. Even a prudent owner of a house would think ten times before effecting what the engineer calls structural repairs, but would not mind having current repairs frequently. Similarly, there are certain fundamentals of this Constitution which cannot be changed light-heartedly, or as simply as we may

effect a change in any ordinary law. Suppose we want to abolish the post of the President, or to make it hereditary. Can we do it by the simple process of moving a Bill and getting it passed by 'a simple majority ? That would be dangerous. Similarly, those provisions or those institutions which constitute the foundations of this Constitution, cannot be lightheartedly dealt with. Therefore, the provisions that have been made, as I said, are not too complicated on the one hand and not too easy on the other.

Those who have been criticising the Constitution on the score that it has been framed by one party, and is exactly the instrument fashioned for the purpose of inaugurating Fascism, I would ask them to study those provisions, particularly those relating to the amendability of the Constitution, and they will find that if they want to change it, and if they can carry the public with them, through the representatives of the public to the extent of two-thirds, then they can unmake the whole Constitution, if they so desire. My Friend Prof. K. T. Shah can see that in this Constitution there is sufficient power for him to tax out of existence his old friends and new enemies, namely the industrialists. There is nothing in this Constitution which cannot be equated with a full measure of sovereignty. The nature of the legislature is such that there are restrictions only so far as the procedure is concerned. But in substance there is no restriction, no limitation on the sovereignty of the legislature or Parliament. As was said by the French writer about the English constitution, "Parliament can do everything except turn a man into a woman." I think the same can be said of this Constitution, and I feel that all that the future legislature cannot do is to turn an idiot into a genius.

Now, as regards the nature of the Executive, all the parties are agreed that it must be Parliamentary as opposed to presidential. It must be responsible to Parliament. To what extent that experiment will be successful, depends upon certain conditions under which it will normally work. If there are two parties and two parties only, I have not the slightest doubt that this experiment will succeed to a substantial extent. But if there are more than two parties the life of the Cabinet will become very precarious. As one of my friends said the other day about the Ministry of a certain province, the Minister would not pay the *lorry-wala* because he thought he might require it the next day to take back his luggage from the ministerial bungalow. It may be, as is the experience of the French Cabinets, that the average life of a Cabinet may be even less than six months.

In that case what is required, what is very essential is, as has been referred to by my honourable Friend Pandit Lakshmi Kanta Maitra, a strong, efficient, honest and industrious Civil Service. The Ministers may come and go; the Cabinets may come and go; but the actual Government, the administration, will be run by the civil servants. From that point of view it is my personal opinion that although the provisions made in this Constitution are good, yet they are not sufficient. For on the Civil Services will depend the good government of this country: on the Cabinet and on the Parliamentary leaders will depend whether the Government is popular or otherwise. What the common man in a free country desires and is anxious about is good Government, because having secured self-government the emphasis has naturally shifted from self-government to good government. The Parliamentary Executive which has been envisaged in this Constitution requires, I shall say, men of a very high caliber and under this Constitution the whole burden, the whole responsibility, is virtually thrown not on the President, as has been suggested by some honourable Members, but will devolve on the Prime Minister—on his personality, on his initiative, on his capacity to make statements, on his capacity

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to respond to public opinion, and above all, his capacity to do the right thing against the popular thing—on that quality or moral courage will depend the success or otherwise of this experiment.

As regards the Legislature, we have adopted bicameralism and I have no objection to it, and in as much as the electorate is to be based on adult franchise, I think the amount of prestige that each legislature will carry will be considerably greater than what it is today. But with that comes the great responsibility of educating our masters. Unless the electorate is sufficiently educated in a general way, capable of weighing not the details of a big problem, but its broad outlines, unless they have some capacity to distinguish between men and men—the democracy that we are contemplating will not be successful. It has been said by Professor Laski, that in the ultimate analysis, it is not the programme *versus* programme that is put before the electorate, although it is done objectively, but the individual equation of leadership. Who leads that party? who leads that party? That is what weighs with the common man. Personalities do count—more so in the case of this country where hero-worship is normal and where devotion is, so to say, the creed of one's life. The necessity of educating the electorate is therefore the greatest. I should, therefore, like to lay emphasis on this aspect that those who have taken part in framing this Constitution should spend the rest of the time from now till the election in explaining the provisions of this Constitution to their respective electorates.

As regards the Judiciary, Sir, we have secured their independence and I do not think that there is anything in which we have departed from the normal provisions that one finds in the Constitutions of other countries. After all the Constitution is merely an instrument, and the main test is whether it is good enough to secure those economic and social ends which we have in view. If it is not then it must be rejected, whether it is drafted by the greatest constitutionalists or greatest lawyers or jurists in this country, whether they have taken part in the struggle or not makes no difference. The main point is whether this is an instrument which is of such a nature as to secure those social and economic ends which have been very beautifully worded and embodied in the Preamble of this Constitution. In fact, I compare the Preamble of this Constitution with the *nandi* of our ancient drama. It is stated in the ancient book on drama that *nandi* must be such that it must contain some suggestions which will show what the plot is going to be. That is exactly what is done in this Constitution. I remember a certain line of criticism to the effect that no economic equality is guaranteed in this Constitution. I would ask them simply to read the words “justice, social, economic and political”. I cannot contemplate in the context of modern circumstances that social justice is possible with private enterprise left free and unchecked. But things are bound to move if those who are in charge of the Government are anxious to secure social justice and when with that end they will act they will have to socialise means of production. Only social ownership will bring in social justice. There is no escape from it. It may come gradually with certain persons in power; it may come quickly if other persons are in power. But the point that I want to make out is that this Constitution does contemplate that social justice will be secured by organising the community with the ownership, control and regulation of means of production, resting in the hands of the leaders of the society; in other words in the hands of the State.

Sir, the Constitution is an instrument and not an end in itself. In the hands of a good workman, it is a good tool to work with. In the hands of a determined workman it will enable him to get what he wants. In the hands of a

reluctant workman there is enough for him to complain. This Constitution is in my humble opinion, in spite of its defects (defects there are and I am not indiscriminate in my admiration although I do not, unlike others, want to repudiate like Vishvamitra), calculated to secure those social and economic aims for which the Preamble stands. With a far-sighted President, with a Prime Minister full of vigour and vision, with genial legislators and a responsible opposition, I think there is nothing to prevent us, under this Constitution, to achieve those aims for which every one of us stands.

Sri M. Ananthasayanam Ayyangar (Madras: General): Sir, the Constitution has had its final touches and this is the occasion for a review of our labours. No doubt we started making this Constitution three years ago. The time that has been spent is not a long one and it is time well spent. When we started under the Cabinet Mission Scheme the Centre was expected to embrace and have a constitution for the whole of the Indian Union including Pakistan. It was envisaged then that the Centre should be weak with powers only over defence, communications and external affairs. If we had accepted the scheme the 565 States in the country would not have come easily into the picture. For no fault of ours the Muslim League did not come in and for one full year we had to wait expecting them to come in—from November or December 1946 to the 15th of August 1947, when the country was partitioned. After the 15th August 1947 for a long period we were faced with difficulties like those created by the Partition, the refugees, the murder of Mahatma Gandhi, the Hyderabad tangle, the Kashmir war which all took a lot of our time. We settled down later and calculating the number of days on which we sat we have not spent more than five months during this long period. On account of causes beyond our control we were not able to push these matters through. Considering the various problems and their magnitude and the various interests that have to be reconciled, any other country with a vast population like ours, I am sure, would have taken not three but many more years to frame its constitution. Therefore it is a matter for pride to us that we have ended our labours at last at the end of three years.

Let us see what we did during this period, which is apparently long but is really short in time. We have achieved many wonderful things. We have brought about the unification of India and it is not a mere paper achievement. As we went on during this period framing the various articles of the Constitution, we went on implementing them at the same time. In fact we settled many problems and then embodied them in the Constitution. The integration of the 565 and odd States in the Indian Union could not have been achieved in any other country without a bloody revolution. A bloodless revolution has brought about this achievement and it must be a wonder to our erstwhile British masters that we have brought about this event without shedding a single drop of blood and so easily that people have reconciled themselves to it. The Maharajas and Princes have gladly come into the Union and are prepared to work it.

The next achievement is with regard to the constitution of the States. First, the States were unwilling to come into line, and when they were also called along with the Provinces they have adopted the model constitution framed for the States. That also has been achieved without much trouble or protest. The persons in charge have managed it successfully and almost every State has come into the Union.

The Minority problem could not have been solved easily but thanks to the integrity of the various religious and other minorities, the separate electorates through which the British Government divided one community from

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another in this country and ruled it, were given up. They gave up at the outset separate electorates for joint electorates with reservation of seats but laterly they have given up even the reservation. Thanks to their farsightedness it marks one more step in the unification of this country and I am sure this will be worked in the spirit in which the minorities have acceded to it. It is now left to the majority community to show that whatever religion an individual may belong to, it is only his talents and spirit of service that will count and not his community and persons belonging to the minority communities will not be discriminated against merely because they belong to particular minority communities. I am sure the majority community will accept the hand that has been stretched out by the minorities, who have gladly given up their reservations.

Another vexed question was the division of powers between the units and the Centre. A committee was appointed and the premiers of provinces who came before it gladly yielded wherever it was found necessary and thus strengthened the Centre. Even in the field of industry and commerce wherever Parliament found it necessary that in the public interests of India as a whole a particular industry should be regulated by the Central legislature it was granted as a concession in the interests of the country as a whole.

The allocation of financial powers as between the Centre and the States, and Provinces loomed very large and at one stage it appeared almost insoluble. The sales tax over which a battle royal was fought was ultimately solved harmoniously. Acquisition of property also was no easy matter. Take for instance compensation for the taking over of zamindaris. In other countries the liquidation of feudal tenures would have taken a long time and wars would have been fought on that question. In various provinces zamindari legislation has been set on foot. Regarding compensation though it appeared at one time that this issue would even break up the whole constitution, ultimately the Nation found a solution in this sphere also.

Then there is the question of language, over which we thought there will be much controversy at one stage. Three or four times we met outside this House and also inside and ultimately we have resolved the question harmoniously. Hindi has been accepted as the *lingua franca* or the official language of India. These are all matters each one of which for its solution would have taken many months, if not years. We have resolved them all in the short period of time at our disposal.

I shall try to answer some of the critics who say that we have spent nearly a lakh of rupees every day or something of that kind. It is all wrong. People from the outside who do not assess things in the proper perspective are carried away by the number of days. The fact is we have not spent much. On the other hand, we have been carrying on in spite of hurdles and have now brought the Constitution successfully to its conclusion.

Let us find out exactly what is the kind of Constitution that we have given to ourselves. I claim that this Constitution is an absolutely democratic Constitution. It vests the sovereignty in the people and enables them to continue to exercise that sovereignty in full. Besides political sovereignty, there is social justice also given in this Constitution. There is no discrimination between one individual and another. All can exercise equal rights without discrimination, so long as a person is not opposed to morality or public conscience. Untouchability has been removed once and for all. In the economic field also, although we have not said so in so many words, we have ushered in a socialistic democracy, which I would have very much liked to have been stated specifically. Equal opportunities have been given to all persons to acquire property.

One criticism levelled against this Constitution is that this is a mere copy of the 1935 Government of India Act and that it does not reflect the genius of our nation. There is some truth in that remark. but it is not wholly true. There are two ideologies today in the political field, which are working in conflict with one another. One is the capitalistic democracy and the other is the socialist dictatorship. Socialist dictatorship prevails in Russia and Capitalistic democracy in the U.S.A. and U.K. The world is today in need of democracy both in the political and the economic fields. It is no use telling a man that he must satisfy himself with political democracy without equal opportunities for property, the means of production being cornered by a few individuals. In a capitalistic democracy, there is political freedom but there is economic dictatorship. In a socialist dictatorship, there is no political freedom, but there is economic democracy. These two forces are fighting and ere long a war may come about. I thought that we must follow the golden mean and frame a Constitution which will usher in socialistic democracy, both the economic and the political fields being democratic and there being no cornering of power or wealth by a few individuals. One, namely, political democracy, has been ushered in. Every man, woman, without discrimination of race, colour or creed is entitled to hold the sovereignty of this country and bring into existence the form of government which he or she wants and change it from time to time. Normally speaking, literacy or some kind of education is insisted upon as a qualification, but here we have provided that any human being above the age of 21 years is entitled to take part in the formation of the particular kind of government he likes. But in regard to the economic field, I would have very much liked that we should have started with an enunciation of the principle that we are trying to usher in a Democratic Socialistic Republic. But unfortunately we have not been able to carry the rest of the people with us. Even the word "socialism" was reprehensible. But later on, by various clauses in the Directive Principles we have remedied the rigours of capitalism. In Parliament in the enunciation of the industrial policy it was said that we shall follow a mixed economy, that is to say, the State will run the enterprises in certain fields and the others will be left to private enterprise. Though we have not said so in words, there is ample provision in this Constitution which if worked well will ere long usher in a Socialist Democratic Republic in this country.

Then, Sir, it is said that by articles 93 and 371 too much power has been vested in the Centre and that it is likely to lead to Fascist tendencies in this country. I say that it might not lead to any such dictatorship at all. More than 14 per cent. are not literate in our country and it will take long to make them literate. I have therefore my own doubts as to whether adult suffrage will work in this country. Left to myself, I would have preferred that the village ought to have been made the unit, and panchayats must have been formed on adult suffrage with local councils etc., and elections must have been indirect. But we have chosen, in keeping with the times, adult suffrage for this country. I am sure that with the growth of adult education for which we have provided in the Directive Principles, namely, that education must be free and compulsory up to the 14th year for every boy and girl, the unique experiment that we are making in adult suffrage in this country will succeed ere long. Even on the score, we need not have any apprehensions. Until the time everybody becomes literate, a provision like the one made in articles 93 and 371 will be necessary. It is a safeguard which all lovers of freedom in this country must welcome.

Thus, I consider that if these various provisions are worked in the spirit in which they have been framed, peace and harmony will prevail in this country. Members of this House and everyone outside, men and women, should feel that this Constitution is their own. There is no difference made. There is no doubt about it that this is a representative assembly. All

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communities have taken part in the framing of this Constitution—Hindus, Muslims, Sikhs, Parsis, Scheduled Castes and representatives from the Scheduled Tribes. All political interests have been represented here. Leaders of all schools of thought are here. Even Dr. Ambedkar, who merely came to watch has taken a leading part in the framing of this Constitution and he is one of the architects of the Constitution we are now passing. The very person who came to doubt and to criticise has ultimately taken charge of this Constitution and framed it. I congratulate him and I congratulate ourselves for the goodwill shown to him and the manner in which he has reciprocated it. After all, by closer contact we can easily understand one another's viewpoint. So long as we are at a great distance, we make much of the small angularities we have. If this Constitution is worked in the spirit in which it has been framed, I am sure we will be one of the foremost nations of the world.

There are also amongst us a number of eminent jurists like Mr. Alladi Krishnaswami Ayyar, whom we cannot easily forget. In spite of his weak and poor health both inside the Assembly and outside in the Committees, he has been rendering yeoman service. We have amongst us also administrators like our Friend Mr. Gopaldaswami Ayyangar. He has had great experience as a civil servant, and then as Dewan in the State and later in the Council of States. Though latterly he has gone out of the picture and has not been much in evidence in the Assembly here in the matter of the Constitution after, Dr. Ambedkar has taken it over, I am sure we will not forget the enormous services that he has rendered. Every section of the Assembly has done it best. Some of our friends who have been very energetic in tabling amendments—Mr. Kamath, Mr. Shibban Lal Saksena, Mr. Sidhva and latterly Dr. Punjabrao Deshmukh who has added himself to this list—have all contributed their mite. Though we have not been able to accept many of the amendments tabled by our Friend, Prof. K. T. Shah, for whose learning, intelligence and capacity I have a good deal of admiration, he has confessed to me outside the House when I talked to him that though we were not going to accept his amendments, he tabled them because he wanted to lay his point of view before us. He has accepted the defeats in a spirit of good sportsmanship. Therefore I feel that this Constitution has been framed by every one of us doing his bit gladly. If there has been defeats to some, those defeats have been accepted in the spirit of a minority having to submit to the majority view in the hope of converting the majority view in their favour at some future date.

Lastly, Sir, we have not tried to make this country greater in extent. We have no territorial ambitions. We do not want the territory of others. In the international as well as in the domestic field we want peace and harmony. With respect to that we have added a clause in the Constitution stating that in settling disputes between nations, arbitration ought to be the rule and not war. I am sure that, to the best of our ability, we will try to avoid war between nations and act as mediators for the settlement of international disputes by peaceful methods.

Sir, I will be doing an injustice to myself if on this occasion I do not pay my humble tribute to the Father of the Nation—Mahatma Gandhi, the embodiment of love and peace in the world. (*Cheers*). I had tabled an amendment to the Preamble to the effect that we must start with an invocation for his long and continued blessing to our country and our Constitution. I find that there is a similar provision in the Constitution of Eire beginning with the words 'With the grace of the Almighty.'. I thought we should similarly start with the words 'With the grace and benediction of Mahatma Gandhi the Father of the Nation'. But my amendment was not allowed. Now, Sir, whether his name appears in the Preamble in writing or not, nobody can erase

the peaceful and solemn voice of Mahatma Gandhi from our hearts. With him as our model, let us march on, work from peace to peace until peace and prosperity reign supreme in the world, May God bless us.

The Honourable Shri B. G. Kher (Bombay: General): Mr. President, Sir. I cannot let this occasion pass without expressing my gratification at the completion of a task which, it is very difficult to realise, we began quite three years ago. I remember our first meeting was held on 9th December 1946 and, in these three years were crowded events which would normally have taken possibly three decades for us to accomplish. Our Constitution Also has undergone modifications as events outside took place. My first impulse therefore is to congratulate this House on having completed a very difficult, gigantic and monumental task and given a Constitution to free India. Every one will agree that it was a difficult task. Even as the manner in which India attained her independence was unique, so was the Constitution of this very Constituent Assembly. I do not think anywhere else a Constituent Assembly has gone on working as the Constitution making body and as the Parliament of the country for such a long period as nearly three years. After three years labour we have built up a Constitution of which we have every reason to be proud.

As I said, our draft Constitution has undergone many changes on account of events which took place after we first met. Remember, Sir, that it was only in May 1946 that the Cabinet Mission offered to us a very weak Centre—a federation no doubt but with a very weak Centre. With nearly 556 States and fifteen provinces we were to have formed a Union with only Defence, Foreign Relations and Communications as the uniting factor for all the federating Units. Now look at the Federation that we have given our country The Federation is formed with a view to, have powerful uniting factors for a strong Centre.

We have solved a number of problems which, at the start, seemed insoluble. There was the question of the separate electorates, the franchise problem and the question of the minorities. These, by a spirit of goodwill and accommodation, we have now solved in satisfactory way. We have solved all these knotty problems including the very troublesome question of our language and the script. It is not necessary for me to go over the whole ground which has been covered by the 395 odd articles of our Constitution. A number of friends have already referred to many of the points to which I would have liked to refer.

Sir, one feature that distinguishes our Federation is that, unlike the other ,countries which have a federation, it is not the fear of any aggression or any outside agency that has inspired us to federate. It is not fear that has inspired our federation. Our federation is the natural outcome of our unique struggle for freedom for years and years. In the Indian National Congress we used to pass a resolution that we must have a Constituent Assembly which should frame our Constitution of free India, instead of being dictated to by any outside agency .or by any sentiment of fear. Our Constitution has been evolved as the natural .outcome of a process unique in its nature, even as our attainment of freedom has been unique. We are now a sovereign, democratic republic completely free to determine our foreign relations as also to mould our destiny in any way we like.

Turning now to the provisions in the Constitution, I do not agree with Professor Shah that we have hemmed in our Fundamental Rights with a number of restrictions which have rendered those rights almost nugatory. A number of speakers have referred to this matter. I believe, Sir, that these are very valuable rights which we have assured to our citizens. We have made them justifiable. They can be made the basis of judicial scrutiny. Article 13 provides that the laws in force in India, in so far as they are inconsistent

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with the Chapter on Fundamental Rights, will straightaway be void. In future also, any of the laws that offend against those Rights will be considered void. Therefore I believe that this Chapter provides very valuable rights to our citizens. For the first time in history, as a friend observed just now, they have been assured to all our citizens.

We have abolished untouchability, the curse of our public life. We have attempted to ameliorate the condition of the very large number of neglected people—the tribals. We must congratulate ourselves that we have provided Fundamental Rights as also the means of enforcing or attaining perfect equality, social, economic and political, both to the untouchables as also to the tribals and the other down-trodden people—equality with the other sections of the public. In part III which deals with these rights, we have an article which deals with the compulsory acquisition of property. I remember very well that it was an article which caused the gravest concern to property holders. It gave rise to a bitter controversy—and at one time it looked as if our disputes were going to cause our ship to founder on the rocks, but ultimately good sense prevailed and negotiations and discussions have given us this article, and I believe, Sir, we have arrived at a solution which need not cause any unnecessary apprehensions. but on the contrary should inspire confidence in the minds of property holders. I believe I am not entitled to speak on their behalf—owning no property myself—but it is obvious that State like ours must, professing the principles that it does of attaining equality and social justice, have certain rights, to acquire property in the public interest and so long as we do not expropriate property owners, so long as we give them a remedy for determining whether the compensation that the state gives is fair or not, I do not think they have any reason to be apprehensive.

Then, Sir, we have the Directive Principles, and I am very glad that one of the Directive Principles is that it is the duty of the State to raise the level of nutrition and endeavour to bring about the prohibition of the consumption, except for medicinal purposes, of intoxicating drinks and drugs which are injurious to health. We all know how it was an article of great concern with Mahatma Gandhi. In my own province I am aware that we are being criticised for being too hasty and for having undertaken reforms which other countries have not been able to succeed in introducing; but, Sir, I am very happy to see that the Directive Principles embody this very important, necessary Directive that in order that the health and happiness of the vast numbers of people in this country may be looked after by the State, it will be their duty to prohibit the consumption of this poison. It is futile to say that we are too hasty and I submit that the pace must be determined by circumstances. Speaking of my own province, we first introduced prohibition in 1938. A part of our province was under prohibition. This time again we have given four years so that the unnecessary criticism which people with vested interests or with bad habits which they are unable to give up, level against us and against this part of the Constitution has really no justification.

Then, Sir, it has been said that we have only adopted the Act of 1935 as our model, for framing this Constitution. While 'I do not see why it should not have been adopted as a model, I want, to point out that it was not a modern designed for an independent, sovereign State. That model provided for an association of heterogeneous elements which lacked equality in political, economic, social and cultural status. And instead of 556 States, with a population ranging from one hundred to several crores, thanks to the way in which we have handled the States problem, the number of what, may be called the vestiges of Indian States is now reduced to nine, and all this has been done within this short period of eighteen months. The First Schedule of our Draft Constitution which is divided into four parts and which is called the

States and the Territories of India contains only thirty units as against fifteen provinces and five hundred and fifty-six Indian States set out in the Schedule to the Government of India Act of 1935 so that, while it is true that we have adopted it as a guide to see that no important questions, no important problems, no important items are lost sight of in framing such an important document, surely there is no similarity between the 1935 Act and this Constitution of a sovereign Republic that we have been able to build up in the four hundred odd articles that we have framed after such careful scrutiny, deliberation and forethought. We have adopted no doubt three lists as the 1935 Act has got, but we have taken into account the practical needs of the present times. I am aware that there is a good deal of dissatisfaction as to the relative position of the items put in the Lists, but it is a matter for the Union and the Provinces to evolve a way of smooth working w h e r e b y the strength of the Centre is not imparted, while the progress of the province is also maintained.

The financial relations between the Centre and the States, Sir, are naturally a matter of great anxiety but I am very glad that good sense has prevailed and we have now evolved formulae which have met with a very generous measure of approval both in the provinces and at the Centre. Let us hope for the best.

Another matter on which we pride ourselves is the way in which we have handled the problem of the minorities. That was a great stumbling block in our way. Part XVI of our Constitution is witness to our constructive genius. We are very thankful to the minorities also for the way in which they have responded to the attempts that we made to abolish separate electorates and at the same time to inspire them with confidence that their legitimate interests will not be neglected.

The question of a national language which has been referred to here and discussed at great length gave rise to vary bitter controversies. I hope, Sir, attempts will be made to evolve a really national language. We need not quarrel about names. We have a script which, I believe, is very rich and very scientific, and although those who do not know it may find a little difficulty in learning it, once they do learn it, I think they will be able to realise that our decision for adopting that script for the national language is a very wise one.

Then, Sir, I do not propose to say much about the question of the judiciary excepting that we need not be led away by mere slogans. The thought seems to be entertained by a large number of people that the executive is always made up of people who want to crush people's liberties and that the judiciary is there like the knight-errant to rescue the liberties of the public from the clutches of the executive. I think, Sir, that this is a very wrong notion and I am very glad that our Constitution has taken a common-sense view of the affair. We have assured the rights of the judiciary and also provided for the powers of the executive. How can you accept this principle that, while the executive is composed of people who are wicked and who are anxious only to crush the liberties of the people, the judiciary consists only of saints who are above all ideas—I will not say—of power but who will not be led away by the same sentiments as those by which the other people are bound to be led away? I know that we have a very difficult task in composing the judiciary. If the members of the bar, when invited to become a Judge, do not consider it as a call to duty which ought not to be disregarded, because a Judge cannot earn on the Bench as much as a practitioner can at the bar, I am afraid we are not likely to secure good judges from the Bar, and the higher posts may have to be filled by promotion from the ranks of the lower judiciary. I am really afraid of the prospect. In my opinion the bench and the bar—I am not speaking in

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ignorance of the Situation, because I have been connected with the legal profession very nearly for 40 years, from 1909—and in my opinion the bench and the bar both are in need of being reminded that they do not cease to be citizens and must be prepared to share the sufferings of the other sections of the people. I agree that it is necessary to have safeguards that the executive does not override the rights of the people. We have agreed to the separation of the executive and the judiciary, but after all the great concern of a young democracy is the security of the State. I am afraid Security is of the very highest value, particularly in a nascent democracy like Ours, where new ideas, new principles, notions of new rights and of equality of status are being imbibed by the people none too slowly. So that those People who only raise slogans of civil liberties in danger and the oppression of the executive will do well to remember that they can raise these slogans and they can protect their civil liberties only so long as anarchy is prevented and the executive functions efficiently, justly and properly (*Hear, hear*).

Sir, I must before I conclude congratulate the House—and I have been here through, well, quite a good portion of these three years—on the monumental work which we have been able to achieve. Some of us are nervous as to the effects of introducing Adult Franchise in our elections. We have taken a very bold step. The only safeguard I can think of is accelerating the pace of social education. The other safeguard is the Upper House. A friend said that the Upper House ought to be abolished. I am afraid I do not share his view. The Upper House is quite absolutely necessary at least for the first ten years and I am very glad we have taken decisions which do not make the existence of the Upper House impossible. In our anxiety to achieve our dreams of equality, of liberty and fraternity and social justice let us not lose sight of the fact that even the attainment of these great things is possible if we do not collapse in the beginning of our new life and the whole machine is not wrecked either through ignorance or through wickedness. There are political parties who are anxious to create a chaos in the country because they believe that in that way alone and through violence alone they can achieve the fulfilment of their dreams. The Father of our nation thought otherwise and taught otherwise and we walked in his foot-steps and we have achieved very happy results and the very fact that we were able to frame this Constitution so early—I call it “early”—and in this peaceful manner, is due to the fact that we accepted him as our guide and leader. Anyway, Sir, it is a glorious risk that we have taken, trusting our fate to the common man for whose happiness and advancement this Constitution is intended and framed.

I once again congratulate the House and I have no doubt that we have done a piece of work which will ensure for India that social justice, peace, progress and prosperity which it has been our aim to achieve (*Loud cheers*).

Mr. President : Before I adjourn the House, I desire to inform Members that the calculation on which I proceeded yesterday has turned out to be wrong. I proceeded on the basis that there will be 72 speakers whose names I had received till yesterday morning. Since then the list has swollen to 125 and probably by Friday week when we propose to close, it may come up to the total number of Members of this House. In that view, it is not possible to sit only three hours a day nor is it possible to give 20 minutes to each Speaker. I, therefore, propose to sit both morning and afternoon, ten to one and three to five, from today onwards and I would expect Speakers to come down to 15 minutes, at any rate, during this week and it may come down to 10 minutes the next week. From today afternoon the time will be 15 minutes for each Speaker and we shall sit from ten to one and three to five every day.

The House stands adjourned till three o'clock.

The Assembly then adjourned for Lunch till 3 P.M.

The Assembly reassembled after Lunch at Three P.M. Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

Mr. President : We shall take up the discussion now.

Shri Prabhu Dayal Himatsingka (West Bengal: General): Mr. President, Sir, various honourable Members have spoken and pointed out the, good points and the bad points according to their view in the Draft Constitution. The Honourable Mr. Ananthasayanam Ayyangar and the Honourable Mr. Gadgil have analysed the provisions very thoroughly and shown to the House what have been our achievements in this Constitution during the period that this Constituent Assembly had been working on this Constitution. There may be difference of opinion as to certain provisions. Some may regard certain provisions as salutary while others may regard the same provisions as objectionable. But, Sir, much will depend on how the provisions are worked also on the vigilance of the people. If we all alert, whatever may be in the provisions of the Constitution, things will move all right. There are persons who object to the powers that have been provided for the Centre in provisions like Articles 257, 358, 365 and so on. People object to article 371 which gives power to Centre of supervision and giving directions over States. But those who know the conditions of States will certainly welcome much wider powers to be given to the Centre. What is happening in Rajasthan ? People are being kidnapped from their houses and ransom is being realized. Unless the authorities of Rajasthan are able to pull up or take steps, it will certainly be in their own interest that the Centre gives directions and those directions are carried out and if not carried out, the Centre takes over and makes arrangements. In some places it has become impossible for people to move about after 6 P.m. and they prefer to live indoors. If such things happen you cannot imagine what assistance or intervention may be necessary. All the powers, after all, will be exercised only in case of emergency and it will be wrong on our part to assume that the Centre will exercise these powers unless it be absolutely necessary to do so. It is not an irresponsible executive or irremovable executive that will be exercising the powers. If they exercise wrongly, the members of the Assembly will be in a position to remove them and I do not think we can compare things now with what the things were before India became free when the Executive was irremovable and the Assembly had no power to remove them. There are certain provisions about which there are misgivings. Some sections of the people say that this adult suffrage is a welcome thing—it gives 16 annas democracy to everyone and everyone will be able to exercise his or her influence on Government. Others feel that this 100 per cent. democracy with 90 per cent. illiteracy will be dangerous experiment and that we should have proceeded with caution. One shudders to think what might happen if the persons who are illiterate and who do not understand yet the value of votes, if they vote wrongly. But there it is, having advocated adult suffrage, it has become impossible for the leaders to say that they do not like it. I know many do not relish the provisions of adult suffrage but they dare not say so.

The powers of the Centre became necessary also on account of the present position of things in many provinces. Those who are to defend the actions of Provincial Governments and the Centre are the persons who are the greatest calumniators of the Governments. One group of Congressmen is fighting with another group of Congressmen—those who are out of Government trying to detract the Government in power simply because they belong to another group. This is happening in almost all the provinces and if you open the newspapers any day you find this. It is a question of personal jealousy and quarrel. Even when there is nothing to oppose, because we are not in power and because others are in power, we complain and try to find fault where there is none. That is how the Congress Governments are being brought into contempt in the eyes of the general public and that is why the rot must stop if we really want to improve the position of Congress and Congressmen; but I do not see any signs yet and in most of the provinces this sorry tale is being made and witnessed.

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It is necessary therefore that there should be some sort of provisions which may be utilized when there is a tendency to break off. Even now you find that when Ministers in the Centre say something, some of the provincial Ministers make statements which go just absolutely contrary to the policy of the Centre. The Government at the Centre say "we want cotton to be grown"-a Minister in Bombay says "we will not do that until the Central Government comes forward to assure us of food supplies" as if food is not being supplied by the Centre and without that assurance being given, food will not be supplied. There must be co-operation between the Central Government and the Provincial Governments. Otherwise it will be almost impossible to carry on the administration and the task will become very difficult.

Sir, a lot will depend on how the Constitution is worked and the person who works it. If you put X in charge of a thing he may do it very successfully but If you place another person, in spite of the fact that he has the same resources available to him, he may make a muddle of the whole thing. A lot will depend on how it works, who works it and the manner in which it is worked. People will always be able to find fault but on the whole it has been a very satisfactory Constitution and if properly worked and supported properly by those who can do it, I think the whole thing should proceed in a satisfactory manner. Some say that some of the Fundamental rights ought to have been wider. I wish along with Fundamental rights there were certain fundamental duties also. If we think more of our duties than of our rights, a lot of our difficulties will be over and the rights will take care of themselves and there will be no occasion to feel any difficulty for want of those rights.

Shri H. V. Pataskar (Bombay: General): Mr. President, it is at the end of' nearly three years that we are coming to the end of our deliberations. Before I go on to discuss some of the aspects of the present Constitution, I would like to survey very briefly in the process through which we have already gone. When we first commenced our task, we were only a Constitution-making body and India was then undivided and was a whole. When we first met here, there was a section of the Members elected to this House who were not co-operating with us. At that time, just on the fifth day of our meeting for the first time, the Objectives Resolution which has been rightly described as India's Charter of Freedom was moved. That Resolution was moved on the 13th December, 1946 and was unanimously passed on the 22nd January, 1947. I would like to draw the attention of the House to three things that that Resolution contained. It first laid down that India shall be an Independent, Sovereign Republic. Secondly, that India was to be constituted into a Union Or Federation and that the Federation was to consist of territories with their present boundaries or with such others as may be determined by the Constituent Assembly, and they were to be more or less autonomous units with residuary powers, and those units were to exercise all powers, and functions of Government and administration, save and except those that are assigned or going to be assigned to the Union. That, Sir, clearly shows that what we then intended was clearly a sort of federation of so many territories or parts of territories of India which were going to be constituted into autonomous or semi-autonomous units. After the passing of that Resolution, several committees were formed and one of the most important committees was the Union Powers Committee which published its report on the 4th July 1947. That report was ready in May 1947. In that report, Sir, you will find that the very first clause of it says that the federation shall be one independent republic known as India. That means that the idea still was the same, that India shall be a federation of these units. As I have said already, at that time, the unanimous opinion was that what we wanted to frame was a complete unadulterated federation of several States. But several events happened in the meantime. Power came to be transferred to the people

of India on the 15th August, 1947. And at the same time India also Came to be divided. This was after we had started our work and passed that Resolution, called the Charter of Indian Freedom. Then, Sir, as we all know, partition was followed by main tragic events and a heavy responsibility was thrown, not only on our leaders, but also on the Constituent Assembly which began to function both as a constitution-making body and also as the Central Parliament under the Indian Independence Act. If these events had not happened, probably we would have stuck to our original plan of having a scientific, systematic, complete federation of Units. But these events were combined with the task of framing the Constitution and this largely affected our outlook, which was till then consistent, and also affected many of the aspects of our task. The suddenness of the intervening events blurred, to some extent, our vision. A strong Central Government suddenly became a matter of urgent necessity. I yield to none, including the last speaker in saying that a centrally strong Government certainly is a necessity. But what that means has to be seen. In view of the problem of the States which were left in an unnatural state by the departing British authorities, our task was still further complicated. And the creation of Pakistan itself created many difficulties. The Frankenstein of Pakistan which arose out of the very body of India, tore it into three pieces, and it was responsible for the spilling of innocent blood, unparalleled in human history and this made us shudder at the very thought that the rest of India should ever consist of even any parts. That changed our outlook with respect to the problem with which we were faced. If we took at what we had been thinking all the time, we would see that we were first consistent in trying to frame a federal Constitution, in the true sense of the term. But these intervening events, the tragedy of partition and the events that followed, led us into altering our first Charter of Freedom and diverting ourselves from the goal which we had set before ourselves. And the whole thing has been due to the fact that we became obsessed with the idea of having a Centre which was going to be strong. In that connection, I would like here to say that everybody wants that in the context of world events as they are now, we do want a strong government in this country. But what is the meaning of a government being “strong”? Power was transferred on the 15th August, 1947 to the people who differed among themselves in many respects. At least till the 15th August we thought that the Suitable form of administration could only be a federal one, consisting of suitable units formed and carved out of these vast masses of people. But as I said, the events that had happened had brought about a change in our outlook. How are we to construct this new strong structure? We have to form the people into separate homogeneous strong units. Or is it possible to suddenly change the central administration in the form in which such a central Government could be imposed by a foreign Government like the British Government? We have to build up these units, and in the building of a strong Centre we must so build the units so that they may themselves be strong. Unless the units are strong, the Federation can never be strong. But it appears that what happened as I said, rather affected the course of events. I find at the time of the first reading, or rather at the stage when the reports of the various committees were considered, the substance of federation was still there. But at the time of the second reading, we developed a fear complex, if I may say so. May be that it was justified by events that happened in our own country and also by events outside. But the fact has to be noted that it did affect the course of events. Adult franchise was differently looked upon, on account of the illiteracy of the people. But this illiteracy is already known to all. It is also known that this illiteracy cannot be removed within a short time, though we may want to. Therefore adult franchise came to be looked upon not only with grave suspicion, but as a matter of grave danger. The result was that the autonomy of the States, or their semi-autonomy came to be looked upon as a matter of national danger.

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We kept the form of the federation, but changed the substance or contents of that federation. It was with the idea of having a federation that we began changing the names of the provinces into States. If the present idea had existed throughout we never would have made that change. But while the name of "State" is there, the power of the State is so curtailed that it is a misnomer to call it a "State" any longer. It would have been much better to have a unitary type of Government, if we so wanted. Then the whole structure would have been differently built.

As the result of a fear of these things, I notice that the following changes have taken place in the framing of the Constitution. The elected Governor came to be replaced by a Governor appointed by the President. Residuary powers which naturally remain with States, if the Constitution was to be really a federal one, have been transferred to the Union. This is wrong in its very conception. I can understand that in a unitary type of Government naturally the residuary powers will be with the Union, because the powers emanate from the Union. But in a federal structure, the powers really emanate from the units and the residuary powers can only remain there. Then, Sir, a curious thing happened. In the First Reading stage we decided that a simple matter like elections in the States should be controlled by the States themselves. But we have now made a provision that they should be controlled also from the Centre (Article 324). Then power was given to the Centre even to legislate for subjects which were assigned to the States List. Financially also, the States will be more or less at the mercy of the Centre. They will derive most of their income from the Centre and they have been provided with very meagre resources of their own. The Governor is no longer merely a Constitutional Head, but has been given powers to interfere in the work of the Ministries. I would only mention in this connection article 167. With the idea of having a strong centre, as if we were continuing under the old Act, many of the problems that urgently needed to be resolved have been kept back.

I know that there are many difficulties. Ours is a land of regions in various stages of development; ours is a land of many languages. We have also many handicaps as a result of being a dependency of the British Empire for over a century. The present conditions in the country are such as to cause grave anxiety and the conditions outside in the world are not less alarming. The East is rising from its slumber and state of suppression. But granting all this we cannot frame a proper democratic constitution which at least in some parts discloses a distrust of the people in general and the common man who alone can be the foundation of a democratic state. That Sir, is my objection to a strong Centre of this type. We can of course give all power to make the Centre strong. But this Centre is not like the centre of the old where the power flowed from outside, from the British. But the power of the Centre must flow from the States, which, in the first place, must be made strong and powerful. Unless the units are strong how can you have a Federation which is going to be strong.

Sir, many things have happened between the starting of our work of framing the Constitution and the completion thereof which has unnecessarily blurred our vision, with the result that we are running away with the idea of a strong centre and launching ourselves probably unconsciously, unknowingly and irresistibly on a line which may not be successful. If we have clearly grasped the implication of our line of thought and action it means that it is our opinion that the people as a whole, the common man, is not capable of exercising properly his rights as a citizen of a democratic federation. In that case, the best course would have been to give up entirely the idea of a Federation, and frame a unitary type of constitution. I could have understood that. We could

then have said: “No, we are not in favour of a Federation; we want for this country a unitary type of Government.” But that is not what we have done. Again, if we thought that for a few more years our people would be illiterate and that illiteracy which is a curse of democracy would disappear by that time then we could have said: “Well, our people will be ripe for a Federal type of Government after fifteen or twenty years.” In that case we should have been content with framing an interim Constitution and left the task of framing the final constitution to those who may come after us. But the present Constitution though called a Union—the word Federation has disappeared, and “Union” has taken its place—is not federal in substance. It is not unitary, for it was never framed as a unitary constitution. The whole thing, as a result of circumstances and events, some of which at any rate are beyond our control I do not want to blame any party or group of persons—is a queer combination of disjointed parts of both Federal and unitary types of constitutions. I want to make it clear that in saying what I do, I do not want to throw any blame on the Drafting Committee. I am just trying to explain the reasons that have led to this result.

Then, Sir, there is another aspect of the Constitution. I know that we were not writing on a clean slate, that there was our former association with the British Empire and that we were a dependency of that Empire for over a hundred years. We were ruled by them and there was the Government of India Act of 1935. Well, what was the Government of India Act! It was merely an adaptation of some of the principles of the unwritten constitution of Great Britain, adapted and made suitable for a dependency as India then was. Naturally that could not form a very proper basis for the Constitution of a free India. Naturally, everything in it was not bad. But what has happened is that our Constitution has become so voluminous because we more or less based our present Constitution on that Act. The Government of India Act contained 328 Sections and eight schedules; the present Constitution consists of 395 articles and eight schedules. We have closely followed the provisions made in the Act of 1935. It is no good trying to conceal the fact that we have based our Constitution on the unwritten constitution of Great Britain adapted to a dependency like India, as it was in 1935. It is not desirable that the constitution should have been so voluminous. We have tried to put into the Constitution what should have formed part of the legislation of the country, present or future. The whole chapter on elections is based on an Act of the Canadian Parliament which does not form part of their constitution. So this should have found its place in the present or future legislation of the country. Unfortunately all this has been tried to be put into the Constitution because we have not been able to keep clear in our mind the distinction between an act of the legislature and the provisions of a constitution.

Our Fundamental Rights are very good and exhaustive but I am not happy about one change which has been made with respect to personal liberty. So far as I am concerned I have not been able to understand why for one simple phraseology which we wanted to avoid we had to introduce articles 21 and 22. To avoid a well known expression “due process of law” we introduced in article 21 the phraseology “procedure established by law”. To get out of that difficulty we introduced article 22. However it will not serve the purpose for which it has been introduced.

The other day Dr. Ambedkar told us that provision has been made in clause (4) by which advisory boards will be appointed before which these matters could be taken. The advisory boards will be more or less the creation of the executive, and taking a long range view, we may or may not be here and others may occupy our seats, the fact remains that the advisory boards will be the creation of the executive of the day and therefore they cannot be expected to be as independent as the judiciary. I learn that we are not probably

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satisfied with the present judiciary but we can change it but in a constitution which is to last for all time to take away such wide powers from the hands of the judiciary and leave them in the hands of an advisory body to be appointed by the executive is a thing which might recoil upon ourselves in future and I shall not be surprised if it happens.

In spite of the shortcomings we have made a very good provision in the Constitution, namely, the article by which it can be amended when occasion arises. A constitution is a living growth and I hope in course of time this provision will be made use of by those who come after us and according to changed circumstances change the constitution in any manner they like.

Shri B. A. Mandloi (C. P. & Berar: General): Mr. President, Sir, we are reaching the end of our journey and within a few days this Assembly would be finishing its task and presenting to the Nation a Constitution for a free and independent India.

Last time the Constituent Assembly laid down certain principles and entrusted the task of framing a constitution to the Drafting Committee and the Drafting Committee presented a draft Constitution of India. We have to see whether we have effected in the Constitution any improvements and what modifications we have made in the Constitution and whether those modifications are really in the best interests of the country.

Most important of all is that the princely order in India has completely disappeared and the 560 and odd Indian States have either merged in the neighbouring provinces, or formed themselves into unions or are put under the administration of the Central Government. The people of princely India who had not even the elementary right of working municipalities and district boards are now free and would be as of right entitled to undertake the administration of their States and the States are put on a par with other provinces of the Indian Union.

According to the Cabinet Mission plan the States had to accede with the Centre only for limited subjects, namely with respect to Defence, Foreign Affairs and Communications. But we now find that the Constitution for these Indian States is going to be identical with that of the provinces. Only a period of five years has been provided to bring the States into line with the provinces.

After the Draft Constitution was presented to this Assembly the safeguards which this Constituent Assembly had provided for the so-called minorities have been voluntarily surrendered by them. These provisions, viz., joint elections and no reservation, could have been imposed on the minorities at the very beginning but we found that after the partition of India the minorities were satisfied that our government is going to be a secular one, that there would be no differential treatment on account of religion or other causes, the minorities being fully satisfied came forward and their leaders frankly and openly proclaimed that they did not want any safeguards. This change of heart is a great achievement and we are going to have joint electorates hereafter. Of course provision has been made with respect to the scheduled castes, that for a particular number of years they would enjoy reservation of seats but after that this safeguard also would disappear. This means that the minorities feel confident that in the Indian Union they will have equal rights, equal privileges and equal opportunities as provided in the Constitution. So it is not an imposition by the majority on the minorities but it is voluntary surrender on account of the confidence which the minorities feel.

The other important thing which the Constituent Assembly has achieved is the provision of one official language viz., Hindi in the Devanagiri script for the whole of the Union. If we look to the past history of our country we find

that at no time there was any common language in India spoken and written throughout the length and breadth of the country. The Constituent Assembly has laid the foundation of one common language and script for the entire country and it has been achieved with the unanimous consent of all the Members hailing from different provinces and speaking different languages. There was no heart burning over the selection of Hindi as the official language although there was some initial tussle over minor details but in the end we came to a happy decision that for a great country like India we should have one common language and that common language should be Hindi written in the Devanagri Script.

While providing one common language for the whole country, we have been careful to see that the provincial languages are not harmed in any way. There is full scope for the development of provincial languages which possess their own rich literature.

Taking into account our ancient civilisation, culture and traditions, we have adopted a suitable name for our country, namely, Bharat. That has also been done with the common consent of all.

The other achievement is the provision of uniform system of administration of justice in the whole of the Union. We have provided for a Supreme Court in the Centre and High Courts in the different States. The High Courts would be under the control of the Centre. Thus, both in the advanced and in the backward States, there would be a uniform system of justice. We have also provided in the Directive Principles that within a few years we shall have separation of the judiciary from the executive.

Successful attempt has been made to make the Centre strong. Although it was urged by some advocates of provincial autonomy, that there should not be any encroachment on the autonomy of provinces, it was realised by us that we have to develop the backward areas and also make the Indian Union strong and powerful and therefore we conceded that the Centre should have adequate powers. At the same time, care has been taken not to weaken the provincial administrations. Sufficient scope has been given to the provinces for the development of provincial affairs and the administration of the subjects which have been entrusted to the provinces, so that the real work may be done in the provinces with the help of the Centre.

The last thing, which was also a thing of a very controversial nature, was the formula that we have adopted for acquisition of property for purposes of the State and the Union. A common formula was evolved, whether it be for abolition of zamindaris or for taking over industrial concerns or for nationalising industry. According to that formula, we find that the legislatures have been given plenary powers to make the laws for the acquisition of property for public purposes. This is a great achievement indeed.

These are some of the important things which have been incorporated in the present Draft which has been submitted to the House for its final acceptance.

We find two very important things in our Constitution. One of them is the Preamble which is an enunciation of Objectives of the Constitution. We have indicated in the Objective Principles; the nature and scope of our Constitution based on Justice, Liberty, Equality and Fraternity. Not only that, we have provided a chapter on Fundamental Rights. In the articles on Fundamental Rights we have provided the liberty of speech, of association, liberty to follow one's own religion, etc. Then there is a chapter about the Directive Principles in which we have laid down the fundamental principles which should guide the States or the Units, what should the State do, to achieve the objects laid down in the Preamble. Thus, if the Objectives Resolution, the Fundamental Rights,

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and the Directive Principles are kept in mind by the persons who are responsible for running the administration at the Centre and in the States, I have no doubt that our country will in course of time become happy, prosperous, strong and powerful.

Some criticisms were made about the Constitution, one of which was that the Administration is top-heavy. The Congress before achieving Swaraj has been telling people, proclaiming to the world that in a poverty-stricken country like ours where the majority of the people do not even have two square meals no person should receive pay running to four and five digits, still we have in our Constitution provided big salaries for some important offices. There is some truth in this criticism. The people expected and would have liked that the Constituent Assembly could have fulfilled those pledges given to the people by the Congress from time to time, and reduced the big salaries taking into consideration the tax-paying capacity of the people. Unfortunately, we have not done so. But there is still a ray of hope. Provision has been made that during the transitory period, and so long as Parliament does not take the matter in hand and by legislation fix salaries for the high offices, the salaries provided in the various schedules of the Constitution would be paid to the respective personages. I hope that our future Parliament which would be constituted on adult franchise would realise this responsibility and radically revise the scales of pay, so that the burden would be proportionate to the paying capacity of the poor people of this country.

The second criticism that has been made is that the Centre has been made too strong at the cost of units. My submission is that this criticism has no force. The strength of the Centre is the strength of the units and the strength of the units is the strength of the Centre. The units are part and parcel of the body corporated viz., the Centre. We have to take into consideration, the great responsibilities of the Centre, nature and composition of the various units. It is therefore necessary that the Centre should be made strong.

In conclusion, I would be failing in my duty, Sir, if I do not say a word about the Drafting Committee. It is well known that the Committee had an arduous and very important task. The Members of the Committee under the chairmanship of Dr. Ambedkar did their job willingly and splendidly and presented us with a draft Constitution. I know that during many controversial debates in this House the Chairman of the Drafting Committee put forward his point of view very ably and succeeded in bringing the controversy to a satisfactory conclusion. This House appreciates the services of the Drafting Committee and I congratulate Dr. Ambedkar, Chairman of the Committee for successfully piloting the Constitution of free and independent India. This Constitution has been prepared within a record period of three years—in fact we should eliminate from these three years the period during which we had troubles of unprevented matters and unsettled conditions. This is a great achievement. Sir, it is not enough to have a good Constitution on paper but it is the willingness of the people, the sincerity of the people and the earnest desire of the people to work it that is important. If the Constitution is worked in that spirit I feel sure that our country will have a bright future. We visualise a bright future for our country and we wish her to be one of the foremost countries in the world. If we work the Constitution in the spirit in which we have made it, I feel sure there is a bright future for the country. With these words I support the motion.

Shri Krishna Chandra Sharma (United Provinces: General): Mr. President, Sir, it is a great day that we are passing the Constitution for a free country in a free atmosphere.

Thirty years ago, when I was just a youngman, I was made to sing, 'Long Live the King'. Later on, an insignia of that King caused me many an uneasy night. I dreamt, I cherished and I struggled and suffered for this day. I feel happy that this day has come. Centuries ago a man in his enthusiasm in the United States of America, when they framed their free Constitution, cried 'Oh. God, by your grace, we are become a nation'. . . . So, with God's grace, we are become a nation, a nation with the power to think good, a nation with the power to will, a nation with the power to execute; to make its dream a reality and realise the possibilities of her growth. It is up to you to fulfil the cherished desire of those who have gone away, the desire of those who are striving along with us and for the good of those who come after us.

Sir, a Constitution, like any other thing resulting from human striving, is a child of its age and so is this Constitution. It will be a good Constitution or a bad Constitution in relation to the circumstances that have brought it about. Year ago, in the Nehru Report of 1928, certain objectives were laid down and a certain structure was given to the Constitution. Though this Constitution does not reflect the Nehru Report in so many words and phrases, in so many clauses and articles, the spirit of that Report is introduced. Then we had the Sapru Report and the various resolutions on the objectives of the Congress and we had also the Government of India Act of 1935. For the ideas that you find embodied in this Constitution you have to go back to the various document that were available such as the conclusions of the Round Table Conferences. Most important of all the factors we have the economic pressure, the social force, the political developments and our relations and connections and association, with the world outside to give shape to our Constitution. No written Constitution in the world can have an isolated existence and can fail to be influenced by the economic pressure, by the connections with foreign powers or the foreign policy of the country. If you look at the American Constitution, you will find that it bears the imprint of the eighteenth Century working and development of British Constitution; and the French Constitution of the days of Bonaparte, has to a very large extent influenced the European Constitutions of nineteenth Century. No Constitution can have an isolated existence. It is but right that we should gain from the experience of others and from the British Constitution and the American Constitution. Those nations have long experience of working democratic and representative institutions. We have benefited by the experience of other parts of the world. Taking that view, we have to analyse a Constitution, as Marshal put it in 1816, and see if it provides for three great departments the executive, the legislature and the judiciary. The function of the legislature is to pass laws subject to the maintenance of the sovereignty of the people. Our Constitution, like all democratic Constitutions, upholds the sovereignty of the people. Like the American Constitution, our Constitution in its Preamble begins with the expressive words : "We, the people of India, having.....". We have universal suffrage. We can be sure that every man who can think will have the right to vote and contribute his share in the building of this great country. A broad-based legislature elected on adult franchise can express the will of the people and carry it out. Such a legislature would make law in the real sense of the term because through the long evolution of the judicial process, we have come to the conclusion that law means the will of the people. In the olden days law meant the will of one man later it came to be meant the will of the few, but now law really means the will of the people. Because we have adult suffrage, our legislature will express the will of the nation as a whole.

Then comes the executive. The executive that we have got is a strong executive with the President and the Prime Minister to aid and advise the President. Now, if you look at the American picture, the judiciary there has

[Shri Krishna Chandra Sharma]

supreme power, and so is the position of the legislature in the British Constitution. Now, what happens in the British Constitution is that the legislature may pass any law for socialising properly, but the services will not carry it out. There is a split therefore between the legislature and the services. The legislature may pass any law, but it is open to the services to refuse to carry them out, and the legislature cannot dismiss the services. So the mere power to pass laws does not mean power to carry them out. In the American Constitution, the Congress may pass any law, but the Supreme Court will nullify it. There has been a rift there between the legislature and the judiciary and between the President and the Congress. The result was that from 1933 to 1936 there was a bitter struggle between the President and the Supreme Court, and between the President and the Congress and the President began appointing judges of his choice. There has been a conflict even over the removal of a Governor. There have been many cases for impeachment and removal of Supreme Court judges. Our Constitution has taken note of all these difficulties. We have got an executive with, the President and the Prime Minister and that executive is responsible through the Prime Minister to the legislature. Then we have got a judiciary more efficient than the American Constitution provides for. In the American Constitution, what happens is that the President appoints judges and the complaint is that some of the judges are moral wrecks and absolutely worthless people have been appointed as District Judges. Some of the Supreme Court judges are not lawyer judges. They have not been appointed from the bar. They know not much of the law. Many of the appointments have been from the political viewpoint. As I said, inefficiency breeds arrogance and arrogance results in irresponsibility and irresponsibility gives rise to corruption and bribery. Our Constitution is really an improvement over the British and the American Constitutions because in all, the three fundamental departments, *i.e.*, in the legislature which makes the law we have provided for the expression of the will of the people. We have provided for a strong executive with responsibility to the people. In the judiciary we have provided for independent, honest and efficient judges, and while the Supreme Court of America can nullify the will of the people, no such thing is possible in our Constitution. At the same time no irresponsible action is possible by the executive or the legislature because in the Fundamental Rights, article 19, we have put in "Reasonable restrictions". If ever the executive or the legislature go beyond the reasonable sphere, then it is open to the Supreme Court to question the validity of the law. Much has been said that in the fundamental rights there have been too many restrictions put and that very little freedom is left to the individual. I beg to submit, as I said in the beginning, that a Constitution is a child of the age. If you look to modern Constitutions, every modern Constitution has the imprint of the economic and social conditions and the foreign policy of the land of the thinkers and writers of modern age. The writers and thinkers that have moulded the modern age: The influence of Law and controversialists, of Rousseau and the idea of general will, of Bentham and the principle of utility, of Hegel, Owen and Marx. We have had for our guidance our own background, political, social and economic. Ours is not so much a case of freedom as a case of building up a State. The necessity of the present is to build a strong and united and prosperous nation. So taking that viewpoint, I find that there is only one thing lacking in our Constitution. We have got Fundamental Rights, a good number of them, but we have not got corresponding obligations of the citizens. Take the case of Norway, take the case of Russia, in all these Constitutions you find along with the Fundamental Rights, the fundamental obligations of the citizens. I wish very much that there had been a chapter in our Constitution on the fundamental obligations of the citizens. But all the same, I think that if we work and work hard, we can make our land strong and prosperous.

Shri Khandubhai K. Desai (Bombay: General): Sir, we are at the Third Reading stage of our Constitution and within the next few days we would have adopted this Constitution and presented it to ourselves and to the country. Naturally this is an occasion for mutual thanksgiving and mutual gratification at the picture that we have been able to evolve after three years.

I must very frankly state before this House that quite a large number of us who have been returned to this Constituent Assembly to frame the Constitution had only got a few hazy notions about constitutions and we have got certain slogans, certain ideas, certain theoretical conceptions of what a constitution should be for a free Republic and, therefore, as far as I am concerned—I cannot say for others—this House has been a sort of school for me. I have learnt how constitutions can be framed so as to take into consideration the realistic situation. I am no constitutional lawyer and neither I am a technical lawyer and so I do not know whether the Constitution that we are presenting to ourselves will carry out the intentions with which we begin framing the Constitution but, Sir, there is one hope and it is this—that we have nearly, taken three years and when we have taken three years they were not the years of a static society. The society, the Indian community had been dynamic; changes were taking place and we have to incorporate those changes also in our Constitution and we were advised at the top by two of our greatest leaders who were really gifts to us by Mahatma Gandhi. They have learnt their lessons of both practical working and idealism at the feet of their great master and so during the last three years we have always got their guidance, their advice and invariably I should say we accepted their advice, when we were in difficulties. It has been stated on the floor of this House during the last two days by some that this Constitution is unitary and some say federal. I think it is none of the kind; it is neither unitary nor federal. It is something which suits our requirements. Why should we go by theories? It is something that suits our requirements. What are our requirements? Our requirements are to have a political structure which while keeping sufficient powers for the Centre in order to see that there is no economic or political collapse, at the same time it leaves initiative to the units. As to whether that intention has been carried out, I Sir, humbly feel that that intention has really been carried out. Somebody would ask me: “Why do you assert that?” To that I would say: I do not assert that, but we have got fortunately in the making of this Constitution the Prime Ministers from the different Provinces who have taken full share in forging this Constitution. They at times quarrel with the Centre and the Centre sometimes quarrels with them and ultimately those people who were for centralization and those people who were for de-centralization came to some happy conclusions and we, as I said in the beginning, most of us do not claim to be either administrative experts or constitutional experts, and therefore, when these people have come to the conclusion that what they have agreed upon do suit their needs, we must accept that it is quite true. Moreover we have also to consider that we have gathered together here to frame a Constitution for one of the biggest Republics in the world and that also after the achievement of Independence through a unique process of non-violent democratic revolution. It is really a matter of gratification that we have been enabled to frame this Constitution in a peaceful and democratic atmosphere.

I was saying that we have been called upon to frame this Constitution as a result of one of the most unique incidents in the history of the world, that is the result of a democratic non-violent revolution and, as I said, we are really grateful that we have been permitted to frame our Constitution in the last three years without any obstacles, without any difficulties which faced other countries when they framed their Constitutions. We are therefore proud, Sir, that we have been able to frame a Constitution in a democratic and, peaceful way so as to give to this country a Constitution which will bring democracy and an evolution through democracy which will suit the requirements of our country.

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This Constitution has to be pledged whether it will achieve our purpose or it will not achieve our purpose from this point of view. After all what is this Constitution ? This Constitution is a mechanism suited to our needs which we created to suit us and to implement whatever we have said in the Preamble, the Fundamental Rights and the Directives given to the Legislature. It has been stated that those things would not be achieved because some among us unfortunately still feel that adult franchise is a very big experiment. I do not understand why it is an experiment. If you do not want to give adult franchise then you would have to bring in all sorts of representations, you would have to bring the representation of labour, you would have to bring the representation of commerce, you would have to bring the representation of women, the representation of industry and also the representation of land-holding classes and what not. You cannot go in the old way of having different compartments, an adult franchise which is not something which is a sort of an experiment and in my opinion it is an essential part of the Constitution. Take away the adult franchise and you will have a Constitution which will be something which you would not like to look at. It is generally stated that there should not be adult franchise because there is no literacy. May I say, as one who is associated with the so-called illiterate people for the last generation, that the so-called illiterates have got a far better common sense of judging things than the so-called literates. That has been my experience throughout. Let us forget for all time now that those of us who have been fortunate enough to get our University education or secondary education are any way better than those who have not been able to get any literary education.

Dr. P. S. Deshmukh (C. P. & Berar: General): If anything, it has spoiled us.

Shri Khandubhai K. Desai : Then, Sir, what is literacy after all? Literacy is nothing but a little mechanism; common sense is there; the development is there; the literature is there. The experiment that has been tried in the province of Bombay in the matter of adult education is really succeeding. If you want to give them literacy, you can do so within three or four months. You need not teach them history; you need not teach them geography; you need not teach them the so-called moral and spiritual codes, because they know these things much better than you and I. After all, for whom are we working this democracy? Are we working this democracy for the two or three per cent. of the people who have been fortunate to get English education? We are really working this democracy for the remaining 97 per cent. and we must work this democracy according to their needs and requirements and not according to what you and I may have studied in the books. As I said when I came to this Constituent Assembly, I had very hazy notions of constitution making; but then who has framed this Constitution, I think it is not the constitutional lawyers though I must say that they have given us some education as good professors and teachers. How can we forget the almost teacherly attitude which Shri Alladi Krishnaswami Ayyar took while teaching us what is good and what is bad? How can we forget the most learned speeches which Dr. Ambedkar made before us? However, ultimately what has happened? After they have placed before us their brilliant exposition of their knowledge, it is the realists who came in the field, the administrators in the provinces, the administrators in the Centre, and forged our Constitution. The realists ultimately framed our articles. Therefore, what I say is that the Constitution which we have been able to frame today is, really a good and workable constitution. There is nothing eternal. You have in the Constitution a clause making provision for amending the Constitution. If the future generations feel that there is some flaw, some shortcoming in the Constitution, is there is a need felt for a change, they can surely change it. What is wrong there?

Sir, after I have said all these things about the good side of the Constitution, there is one thing about which I must say a word. Though according to my humble view this Constitution has more or less been framed on a realistic approach of the problems in our country, there is one matter in which all of us have failed to discharge our duty to the country. We have taken every realistic aspect of the country into consideration; but we have forgotten one realistic aspect, and that is the national wealth of our country. We have provided in the Constitution certain salaries and they have been guaranteed by the Constitution. I think the high salaries which have been guaranteed under the Constitution are unrealistic as compared to the national wealth of our country. The salaries and emoluments of the Government servants and the high national dignitaries should have some bearing to the national wealth of the country, because, it is these salaries and emoluments which are going to set the standards for us, during the transition period, for the earnings and salaries of private persons and industry. I think we have lost this opportunity of setting down a proper standard. There is, as you know, nothing sacrosanct about the Rs. 4,000 or Rs. 5,000 or 10,000 or 15,000. If a standard is laid down by this Constitution, and if we as the sovereign Body give a Constitution to the country laying down a standard, that in this country nobody shall get more than Rs. 1,500 or Rs. 1,000 then, everybody will be satisfied. The industrial magnates have to bring down their earnings; the commercial people would have to bring down their earnings and there will be no bickerings, no jealousy and no envy. If my Friend Shri Kanhyalal Munshi earns Rs. 40,000 or 50,000 or even a lakh of Rupees, he does not consume the whole of it. He wants a lakh of Rupees because there are some merchants who earn two or three lakhs. If once for all it is said that nobody would get more than Rs. 1,200 or 1,500, then these personal envy and jealousy will go. Because, after all, you must understand that if you give Rs. 10,000 to your President, or Rs. 5,500 to your Governor or Rs. 5,000 to your Chief Justice of the Supreme Court, where is that money to come from? It is a sort of a cheque drawn on the national wealth and to that extent if it is not available from the national funds, somebody is to be deprived of that portion. Therefore, as I said, so far as this Schedule of salaries in our Constitution is concerned, I think we have failed in our duty. But, the question may be asked, it could be changed by the future generations, it could be changed by the new legislature. Sir, it is very difficult particularly in the matter of these personal emoluments and other things which affect the high dignitaries who will be practically the fountain head of our State. Even the future generations, even the future legislature, if they want to change, they would have to think; not only would they have to think, but the President may feel awkward. Therefore, we have lost this opportunity. I want to express my resentment against this. The question was raised at another place; it was discussed, but we adhered to old set-up. This sort of mentality one cannot understand. We want to give away everything English; everything which we have inherited from the English was taboo; but one thing we must have; that is, the English standard of our salaries must be maintained. I think we would have done better to our constituents if we had left the things without deciding them. Future Parliament should have been left free to decide according to requirements.

Then Sir, there is only one point and I would have done. Much has been said about civil liberty. Of course, our friend Professor Shah has his usual grouse against anything which theoretically does not suit his own mental makeup. But when the question of civil liberty comes in, people talk of the individual civil liberty of those who want to take away the civil liberties of all men. Is it proper to allow somebody, as it is happening in Calcutta, or in some of the places in Andhra, in the sacred name of civil liberty, to exercise their individual

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civil liberty in order to take away the Civil liberties of millions of people and create fear among them ? I think that is not civil liberty.

An Honourable Member : Criminal liberty.

Shri Khandubhai K. Desai : Under these circumstances, I feel that the provision that has been made in this Constitution for safeguarding the civil liberties of a substantial number of the people in this country is the proper direction in which our State should function.

With these words, I support the Third Reading.

Pandit Thakur Das Bhargava : (East Punjab : General) : *]Mr. President, my heart is still with surpassing joy today when we have after centuries of slavery, this opportunity of giving the Third Reading to our Draft Constitution. I render thanks, Sir, to the Almighty God on this day loaded with destiny for having granted to us in His infinite mercy this opportunity of completing our work of giving a Constitution to our people. Next to the Almighty I feel, Sir, I must render thanks unto you for the inimitable manner in which you have conducted the proceedings of this House with dignity, impartiality, gravity and firmness. I feel, Sir, that this could have been done only by you and you alone. I do not doubt, in any case it is my ardent desire—that the day would come when the prophecy of the Pandit who had been called by your parents for performing the sacred ceremony of giving a name to you would be completely fulfilled. It is my hope, Sir, that the time is soon to come when the position, that your name suggests you should have, would be occupied by you. You are Rajendra that is to say the Lord of the Rulers, and you shall be, I hope, the President of the Republic for that office alone would make you the Lord of the Rulers and the Governors. I have no doubt in mind that this desire of us all shall be fulfilled soon. You will be Sir, in future the President of our country just as you have been the President of this Assembly, charged with the duty of giving a Constitution to this country, and I hope that you will be presiding over the enforcement and implementation of this Constitution with the same grace with which you have presided over its passage in this Assembly.

I would like, Sir, on this occasion to thank the other friends also who have helped us in drafting this Constitution. I would like particularly to mention Dr. H. C. Mukerjee who had presided over the proceedings of this House with great ability and tact at the time when you were lying sick and I offer my thanks to him. I do not know, Sir, the terms in which I should thank the Drafting Committee, particularly words fail to convey the gratitude that an of us feel for the legal acumen, the untiring industry, the consummate skill and the firmness, tempered with moderation, with which the chairman of the Drafting Committee has piloted this Constitution through this House and has solved all the knotty questions arising in connection with it. In view of the great public spirit manifested by him, I would appeal to Dr. Ambedkar—I regret he is not in the House today—who has so far considered himself the leader of the Scheduled Castes alone to join the Congress. He has made for himself a high position in our hearts and I do hope that he shall thereby be able to enter the circle of Congress High Command—a position which is much more significant and important than the narrow one he is occupying today, I must also render thanks to Shri Gopaldaswami Ayyangar who in his own silent way came to our rescue and solved the knottiest problems which we have had to face from time to time in this House. The fact is that there are no adequate words in which I can express the debt we owe to him for the great work he has done on the Drafting Committee. I offer my thanks to Shri Munshi whose unique learning and comprehensive imagination has been our refuge on such knotty problems as the language question. Sir Alladi Krishnaswami Ayyar who is a distinguished jurist of our country has laid us under a debt

*[] Translation of Hindustani speech.

beyond description by his learned contributions on points of law, and I can say that his complete mastery of constitutional law of all countries has proved a great asset to us all. I find no terms in which to praise the work done by our Constitutional Advisor Sir B. N. Rau, who is today in the U.N.O. but who even there is anxiously watching the progress of our work, in putting this Constitution into a proper shape. Again I do not know how I can fully thank our Friend Shri T.T. Krishnamachari, whose manners are so charming and who has like Dr. Ambedkar laboured hard to give a proper shape to this Constitution, and who has exhibited a legal acumen which even lawyers which he himself is not, may envy. We have a feeling of deep gratitude for all the other members of the Drafting Committee who have made this Constitution whether small or great in the shaping of this Constitution.

I also express, my thanks to the gentlemen who are occupying the chairs just below the dais, for the great pains that they have always taken in rendering every help to us. Mr. Mukherjee, who always came to us smiling, deserves our thanks for his sincerity, labour and learning with which he always helped us in framing the most complicated drafts that came before the Drafting Committee. Similarly we owe thanks to Mr. Jugal Kishore Khanna and others whom I do not know by name.

The Draft Constitution, for the Third Reading of which we have assembled here, is not, like other Bills, an ordinary document. It is a very important document. This document is not prepared by a country many a time and God forbid we may not have to draft it afresh in the near future. I would also like to extend my thanks, on behalf of the House, to the Press Reporters and the members of the staff who have in any way contributed in framing this Constitution. There are many honourable Members in the House whose untiring zeal and labour come to my mind on this occasion and I cannot pass on without expressing my thanks to them. In this connection, my friends Shri. Kamath and Shri Shibban Lal Saksena deserve particular mention. The amendments that were so often moved by my Friend Shri Brajeshwar Prasad for unitary system, exhibited a perseverance and strength of conviction for which we shall ever remember him. We are grateful to our Socialist Philosopher Shri K. T. Shah who with his deep learning and with his exposition of a number of philosophies has immensely enriched our knowledge. I must express my thanks also to Shri Sidhva, the famous advocate of the public causes, and the veteran grammarian Shri Naziruddin Ahmad, and Dr. Deshmukh who took great parts in the task of framing the Constitution.

It is quite possible the Exchequer had to incur a bigger expenditure on account of these Members. But, for the labour they put in, our Constitution could not have been what it is today. One fails to understand why newspapers have adversely commented about them. But despite all they have said, it must be admitted that all these Members did their duties well so far as the work of Constitution making was concerned.

Now I would like, with your permission, Sir, to pay my homage to one of our senior-most statesmen, I have no words to express my devotion to him. From the speeches made by me in support of various amendments, the House as well you, Sir, must have become sure of the fact that I am not one who loves flattery. But what I am going to say is the truth and I express it because the feelings surging in my heart demand an outlet. It is impossible for me not to render my thanks publicly to Sardar Vallabhbhai Patel. He has not sent in a single amendment but the fact remains that he has been the architect of our country all the same. He has solved all the problems so beautifully and skillfully that I think it will not be wrong to call him the architect of India. The House has,

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on occasions eulogised him for what he has done with regard to the problems of States. But I may be permitted to submit, Sir that there was another question equally important, if not, more, as the States questions, is with which the country was faced and Sardar Patel, the superb magician, solved with an ingenuity which would have appeared to us a fantasy but for it being a hard fact I am referring to the question of minorities. The British had left many cancers within our Polity. One of this was the cancer of minorities and separate electorates. It ultimately led to creation of Pakistan. The depressed classes complained that the Caste Hindus were depriving them of their right and demanded separate representation. All these problems relating to minorities have been solved by Sardar Patel with great skill, sagacity and ability. This is an achievement which, in my opinion, has no parallel in history. At the time when the Minorities Sub-Committee was formed, I could not even dimly see how we would be able to solve the numerous and complicated problems connected with minorities. But Sardar Patel filled the Minorities Committee with the persons belonging to minorities. You cannot but feel amazed as to how it was that the minorities Committee which was composed of a very large number of the representatives of the minorities and this would be evident even by a cursory glance at the long list of its members—could arrive at the unanimous decision that no separate electorate or reservation was needed by the minorities. There the Sikhs declared that they did not require separate electorates and reservations. The Members of the depressed classes also said that they wanted reservation only for ten years.

I may be permitted to submit, Sir, that it is only because of the work of Sardar Patel that we are able to hold our heads high and say that in our land of three hundred million people we will have adult franchise with one electorate. This is in itself a great achievement and great blessing for us. I must take the opportunity to offer congratulations not only personal but on behalf of the House to Sardar Patel who has achieved all this for us.

Sir, I am afraid, much of my time is over. I would now like to invite your attention to the most important matter that is to the Preamble of the Constitution. The Preamble is the most precious part of the Constitution. It is the soul of the Constitution. It is a key to the Constitution. It is a proper yardstick with which one can measure the worth of the Constitution. All the 395 articles of the Constitution have to be measured with the yardstick of the Preamble and such provisions as stand the test of the Preamble are good and others should be taken as worthless. The fact is, Sir, that our Jawaharlal is to us, what his name, suggests, a precious jewel. It is no surprise therefore that the Preamble which was drafted by him is also a jewel set in the Constitution. It is a superb prose poem, nay, it is perfection in itself. It is why my honourable Friend Kamath failed to introduce his God into it, for in a perfect thing there is no scope for addition or alteration.

Sir, I would like that we examine all the provisions of the Constitution by this touchstone of the Preamble and thus decide whether the Constitution is good or not. I submit, Sir, that the Constitution that we have been able to produce after the labours spread over three years, is certainly one of which we can well be proud, which can claim to be quite a good one. I do not deny that the Constitution has certain lacuna to remove which we have all along been struggling, but I have no hesitation in saying that the Constitution as a whole is quite good and that it can be ranked among the best Constitution of the world. It is true, as has been observed by an Englishman, that people get the type of government they deserve. This saying applies also to the

Constitution we have given to ourselves. The Constitution provides us free scope for progress. This Constitution, however, cannot be taken as an ideal one and we would most certainly have occasions to improve it.

Now, Sir, before I bring to your notice the defects of the Constitution, I would like to draw your attention to one thing. The English people had put in our minds the idea that we should have purely a federal type of government for our country. At the time of the Round Table Conference the question arose as to the type of the government we should have for our country and the conference decided to have the federal system. I remember the day in 1927 when during the sitting of the All Parties Conference our respected old leader Shri Vijay Raghavacharya insisted that we should have a unitary system of government for India. He is no more with us but his vivid figure is still fresh in my memory and I am glad that this Constitution would have given him immense pleasure if he could have seen it. This unitary-*cum*-federal system of government provided in the Constitution, must have satisfied him. I admit it is not purely a unitary Constitution. We have, no doubt, taken in it many of the provisions of the Government of India Act. We did so far we have to work on the lines of various provisions of the Government of India Act in our present circumstances. But the Constitution that we have prepared as a solution to our problems cannot be said to be based on the Government of India Act. Our Constitution is unitary-*cum*-federal and the country needed this type of Constitution. I am really very glad that we have been able to prepare such a splendid Constitution with unanimity. It has given the Centre very wide powers—powers that were in fact needed by it. Though we have made the centre strong and over strong but yet I may be permitted to submit Sir, that the logical conclusion of this course has not been given any application in other provisions of the Constitution. It is so, because we have had the experience of the conditions obtaining in the previous Government and their memory is still haunting our minds. No doubt there are provisions in the Constitution under which the Centre may, if it so likes, suppress the provinces in various ways. I consider that a merit of this Constitution. Some of my friends have said that fundamental rights imply corresponding duties. Applying the same reason if they argue the duties of the Centre would also be as numerous as its powers, I have no doubt that it would be the duty of the Centre under this Constitution to prevent external aggression and internal disturbances. But in exercising its powers under article 356 it would not by itself be sufficient for the Centre to issue directions to the Provinces. It would also have to see that the arrangement proposed in the directions is one which is to the liking of the government or the Legislature of the provinces concerned, In my opinion there should be a Minister in the Centre who is charged with the exclusive duty of watching over the government and the administration of the provinces. In my opinion this work may be assigned to the Prime Minister, but if it is not possible to do so a Ministry without Portfolio may be appointed for that. And then we should have at Centre an exclusive Minister to look after the work of social reforms also. Many other similar arrangements have to be made to provide for all these requirements.

Now I would like to draw your attention, Sir, to a few minor things embodied in the Constitution. India has, no doubt, recovered herself; we have got our ancient India now. As regards the name of the country the term “India that is Bharat” has been laid down in the Constitution and some of my friends objected to this term. As for me, I have no serious objection to it. It is a fact that we cannot live in isolation from the rest of the world; we have centuries old connections with England and the rest of the world. The world will always know us by the name of India. But so far as we are concerned, in our hearts and souls our country shall always remain as Bharat. So the term India

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and Bharat have been bracketed in order to meet the need of our countrymen as well as of the outsiders. The world will call us as India and we ourselves will call us as Bharat. Thus there will be blending of the East and the West.

Our provisions relating to citizenship are very generous and they extend citizenship not only to persons having domicile in India but also to five or six millions of persons who having been uprooted from Pakistan have migrated to India. Even the persons who had migrated to Pakistan but have again returned back to India under a permit for resettlement, have been made citizens of India. No doubt in their case, legally we should have waited for five years but I think it matters little that they had left India, and if they want to resettle here we can give them the citizenship of our State, for originally they had their domicile in India. As far as the Fundamental Rights are concerned, the House knows it well that I have always been fighting for them. The House, by accepting my amendment regarding the addition of the word "reasonable" in article 19 has made it justifiable. The Fundamental Rights and the Directive Principles—both these are the soul of the Constitution. We can no doubt establish the Ramraj advocated by Mahatmaji unless we make the Fundamental Rights and Directive Principles our guiding Star and work according to them. The decision, that the House has adopted them is certainly a milestone to our progress. We have achieved our ideals to an extent through Fundamental Rights and the rest is to be achieved through Directive Principles. We have not got the Fundamental Rights in full. Though the Constitution has accepted the right to equality and has also abolished untouchability but still it has not conferred on us the Fundamental Rights in full.

With reference to the Preamble again, I may submit, Sir, that the most important thing that it contains is the ideal of "the dignity of the Individual and Unity of the Nation." In this high ideal, Sir, there is no room for narrow provincialism and communalism. Right to equality before law, has been embodied in Fundamental Rights and our Preamble contains the lesson that the dignity of the individual and the unity of Nation must be held high. No difference, whatsoever, on grounds of religion, caste and region has been recognised in the Constitution. The Fundamental Rights are general rights and every citizen is equally entitled to them. No discrimination can be made in respect of these rights. We shall expand these rights further in due course. I fought hard for it in the party. I know these are not as comprehensive as they ought to have been. However, I need not be sad on that account. The words "reasonable restrictions" are there in article 19 and they imply that these can only be curtailed by due process of law. Neither the Government nor the legislature can withhold the rights granted under article 19 and the rights of the people are safe under this article. I am really thankful to the Chairman of the Drafting Committee, Hon'ble Dr. Ambedkar, that he agreed to my amendment regarding the insertion of the word "reasonable" in article 19. So also we have gone a long way in regard to the rights granted under articles 21 and 22. There is no doubt that sufficient rights have been given to the people under Fundamental Rights but at the same time this also cannot be denied that we could not have as many rights as we wanted to have. No such rights were given under the Government of India Act. In England Fundamental Rights have not been incorporated in the Constitution and this only can be possible here, only when the people develop the mentality that is found in other free countries. But with Fundamental rights we have certain duties also as citizens. I hope we know, our India and our culture and there is no doubt in my mind that we are going to make progress in future and nothing but progress; I hope, Sir, that our sacred country will never fall again. Our country is going to make rapid progress in future and every citizen is sure to have his full rights.

I may now make a brief reference to the Directive Principles. I would like to submit, Sir, that they are a source of immense pleasure to me. My friend Hon'ble Shri Lakshminarayan while criticising the Directive Principles for their restricted sense, stated yesterday that there is no provision for charkha, for cottage industry and for prohibition in them. May I suggest to my friend Mr. Sahu to read articles 36 to 51 of the Directive Principles? He will find that provision for all that he wants is there. Provision for prohibition is there, provision of cottage industry is there. I may submit Sir, that the Directive Principles contain all that is needed to raise the dignity of the individual and bring about the unity of the Nation. The amendment relating to cow protection that came in the last session was an agreed amendment and the whole country was in favour of that and shall always stand for that. This is not the only question underlying that amendment that the Hindus and the Muslims both regard the cow to be very useful and that they have always been of that view but it contains mainly the view-point of the Drafting Committee and I am glad that the House ultimately removed the lacuna that was in the original article.

Now I may be permitted, Sir, to come to the other salient feature of the Constitution. Our Constitution has given to the Supreme Court not only such rights as our former High Courts enjoyed but I claim that the Supreme Court has been given wider powers. The Supreme Court would have more unrestricted powers with regard to the safeguarding of the public rights than any former court had. I would submit that under the Constitution the Supreme Court has been given the same criminal jurisdiction that the Privy Council has at present. The Supreme Court has been granted full powers and it may widen them daily by case law. There is no doubt in my mind that the civil liberties that have been given under the Constitution are in no way less than what other countries have. Sir Alladi Krishnaswamy wanted that the principle of due process should not be applied in this sphere. But I am glad that more than 75 per cent. of the principles has already been accepted. Our Constitution provides for the institution of an independent Comptroller and Auditor General and therefore the accounts of the Union will be audited and examined in a more independent manner and no money will be allowed to be spent without due authority. Similarly provision has been made in the Constitution for the establishment of Public Service Commission and various States Commission, that will work under the supervision of the Public Service Commission. I am glad that all these institutions have been given more independence under the Constitution than what they formerly enjoyed. In respect of every matter we have provided for a Central body and have also provided for a corresponding body in provinces. The Constitution has provided for Legislatures and a responsible government in States. So far as the Governors are concerned they will be nominated once, for in unitary system elected Governors do not fit in. So we find that the mistakes we had made in providing for elected Governors in the original Draft has been rectified in the Constitution as it stands today.

No doubt the time of three years taken by Assembly in preparing the Constitution is a long one but we have made great achievements during this period which I am afraid are not properly assessed by many people. If we had passed the Constitution soon after the Assembly sat in 1946, most of the ills that we had inherited from the British Government as legacy—for example, separate electorate, the existence of 562 independent States—would have remained embodied in the Constitution.

[Pandit Thakur Das Bhargava]

I do not agree with those who subscribe to the view that our standard has fallen down. Rather I feel that our standard of living is much more higher than what it was formerly. Today we are able to witness this glorious occasion. What I mean to convey is this that our Constitution embodies every such provision as it needed by us. While we have embodied in the Constitution provisions for taxation, we have also provided for the appointment of a Fiscal Commission in future to examine the finances of our Union and I hope the Fiscal Commission is going to be appointed shortly. In fact I do not find anything for which no proper provision has been made in the Constitution.

I do not want to take much time of the House, Sir, therefore I am now going to conclude my observations with the remark that Constitutions are only a piece of paper and they by themselves cannot enable us to achieve our ideals. It is the spirit with which the Constitutions are framed and with which they are worked that enables a nation to achieve the objective underlying its constitution, Therefore, on this occasion, Sir, when we are going to pass our Constitution, I would like to impress upon the minds of the Members who will be appending their signatures to this document on the 26th of January 1950, that their task is not over by simply preparing the constitution—but their real task is ahead. It is for them to work the Constitution in such a manner as may enable the people to have real freedom, happiness and prosperity.

Now with your permission, Sir, I would like to refer to only one more matter. It is very dear to me. We have given much to Scheduled castes. We have provided reservation for them. We have embodied in the Constitution article 335 wherein assurance has been given to them in regard to services; we have provided facility for reservation for them in services under article 16. But I hope we will have not to see the day when the Government reserves posts for them. If we really want to establish here the classless society of Mahatma Gandhi, every one of us who signs the document of the Constitution must do so with the determination rather the pledge, that he must bring the depressed classes at par with him within ten years. He will be false to himself who signs the Constitution but does not work according to its principles.

I offer my thanks to you, Sir, and to the members of the staff of this Secretariat who have contributed in the preparation of this Constitution as also to the Members of the Assembly. May God grant us the sense and courage to serve our country on the lines the Father of the Nation and our other respected leaders have laid down.

Mr. President : Before we adjourn I want to draw the attention of honourable Members to something which happened a little while ago when an honourable Member wanted to draw my attention to a certain fact. I wish honourable Members will take note of that fact. I expect that Members are interested in the speeches of others more than in their own. They should at least sympathise with me who has to listen only to other speeches and never to his own and if for nothing else at least I hope they will be able to be here throughout the session, so that we may not have any such complaint again.

The Assembly then adjourned till Ten of the Clock on Saturday, the 19th November 1949.

CONSTITUENT ASSEMBLY OF INDIA

Saturday, the 19th November 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi at Ten of the Clock, Mr. President (The Honorable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION—(Contd.)

Mr. President : We shall now continue the discussion. Mr. Kamath.

Shri H. V. Kamath : (C.P. & Berar: General); Mr. President, I rise to extend my limited and qualified support to the motion moved by Dr. Ambedkar. We, Sir, the people of India have come to the end of a long journey which is, however, the beginning of a longer, a more arduous and a more hazardous one. Through several decades of struggle we have reached the goal of freedom. During those decades we passed through many vicissitudes of fortune and were guided by leaders many of whom are not among us today. True to the Indian genius our struggle, our awakening, began with a spiritual renaissance which was pioneered by Ramakrishna Paramahansa, Swami Vivekananda and Swami Dayananda. In the wake of those spiritual leaders came the political renaissance and the cultural renaissance of which the torchbearers, the leaders, the guides were Lokamanya Tilak, Aurobindo and Mahatma Gandhi and, last but not the least, Netaji Subhash Chandra Bose. Thanks to Providence, leaders of those days, leaders like you, Sir, and Pandit Nehru and Sardar Patel, are still with us to lead us to the goal which Mahatma Gandhi had in view. The goal that Mahatma Gandhi had in view has not been reached and to lead India to that goal is the mission, is the task of this Assembly and of the people of India today.

The whole of India took part in that glorious struggle for freedom. In the extreme North, in Kashmir, my honourable Friend, Sheikh Abdullah took part, and a valiant part, in that conflict. In the North-West of India, which unfortunately has been severed from us today, Khan Abdul Ghaffar Khan and his brother Dr. Khan Sahib were in the forefront of the national struggle. That part of India is no longer with us, but our hope and our faith is that whatever the differences between the part that has gone from us and the part that still remains to us, those differences will be removed, will be smoothed and our relations will become happier day by day, and Pakistan and India will live on the most cordial terms as years roll by.

It is unfortunate that this Assembly is still not a complete Assembly. Two of the units of our country, Vindhya Pradesh and Hyderabad, are still unrepresented in this Assembly. I hope that the Members from those two units, Hyderabad and Vindhya Pradesh, will take their seats in our midst before this Assembly winds itself up in January.

The Constitution that has been settled by the Assembly, I may describe as a centralised federation with a facade of parliamentary democracy. We have drawn up a very elaborate Preamble, but without the invocation of God, to me, Sir, it is like sounding brass and tinkling cymbal. We have proclaimed the immutable principles of justice, liberty, equality and fraternity in the Preamble but if we turn inside, if we go through the Constitution we will find to our chagrin, to our sorrow that these principles have been watered down to a considerable extent. Many of my friends here tried to improve the Constitution according to their best lights and some of us did succeed in some degree.

[Shri H. V. Kamath]

God did ultimately find a place in the Constitution though only in the form of the oath to be taken by the various dignitaries of State. My friends whom I would like to particularly mention today, Prof. Shibban Lal Saksena, Dr. P.S. Deshmukh, Shri R.K. Sidhva, Shri Mahavir Tyagi, Pandit Thakur Das Bhargava, Mr. Naziruddin Ahmad, Prof. K. T. Shah, Pandit Hirday Nath Kunzru and Shri Brajeshwar Prasad and lastly, my humble self, all tried in our own way to make the Constitution conform to the Preamble; but I found that the horoscope of the Drafting Committee was strong. I found, Sir, besides the nine planets and also the tenth Dasagraha दशग्रहः, there were two in one which obviated the malefic influences of the other planets and those planets were Pandit Nehru and Sardar Patel. There is an astrological sutra which runs किं कुर्वन्ति ग्रहाः सर्वे यस्य केंद्रे बृहस्पति Kim Kurvanti grahah sarve yasya kendre Brihaspati. On account of the presence of Brihaspati in the Kendra', the effect of the other planets came to very little, It did not amount to much.

Pandit Balkrishna Sharma (United Provinces: General): Who were the Rahu and the Ketu?

Shri H. V. Kamath : I leave it to Pandit Balkrishna Sharma to decide who they were.

I was saying that this Constitution is a Federal Constitution with a facade of Parliamentary democracy. Mahatma Gandhi wanted India to be a decentralised democracy. He told Louis Fischer, the eminent American publicist some years ago that "there are seven hundred thousand villages in India each of which would be organised according to the will of the citizens, all of them voting. Then there would be seven hundred thousand votes and not four hundred million votes. Each village, in other words, would have one vote. The villages would elect the district administration; the district administrations would elect the provincial administration and these in turn would elect the President who is the head of the executive. Louis Fischer. to whom he propounded this plan, interjected": 'That is very much like the Soviet system'. And Gandhiji replied: ' I did not know that. I do not mind.'

Sir, for good or for ill,—I hope for good—we have deviated from his plan and we have evolved a different plan, partly because we are passing through a difficult transition period. A time will arrive when India is stabilized and strong, and I hope we will then go back to the old plan of the Panchayat Raj or decentralised democracy, with village units self-sufficient in food, clothing and shelter and interdependent as regards other matters. I hope we will later go back to that Panchayat Raj Sir, to my mind the only system that will save India and the world is what I may call spiritual communism; I have in mind not the communism of the materialist brand. I have in mind spiritual communism. That is what Gandhiji had in mind when he based his conception of the future form of Government on the spirit of Divinity controlling human affairs. This meant spiritual communism. That alone will save the world. Today, in the conflict between the atom bomb and the *atman* "आत्मन्" it is only *atma shakti* "आत्मशक्ति" that will prevail.

Now to go back to the preamble and the Constitution, I find that so far as justice is concerned, the Constitution amply provides for those who adorn the seats of justice. They are better provided for than those who will resort to the Temples of justice. The Drafting Committee had a soft corner for those eminent dignitaries who will preside in those Temples of justice and not to the humble votaries in the temple. As the Constitution was drafted by lawyers, perhaps it was inevitable that it should be so, as in the Sanskrit sloka नीलकागत मपि कुटिलं न भवति सरलशुनः पृच्छम् Nalikagatamapi kutilam na bhavati saralam

shunah puchham. The lawyers' bias could not be avoided and therefore it is that in the Constitution the judges have been unduly pampered.

Again we and the emergency provisions and article 22—1 do not know how the latter found a place in the Fundamental Rights,—the right of a person to be detained without trial for three months or more. These provisions water down the principle embodied in the Preamble regarding individual liberty. They have fettered individual liberty. Let me make it clear that I am not a champion of absolute individual liberty. I want individual liberty only in so far as it does not jeopardise the security of the State. With that end in view I moved several amendments. They were not accepted. Then as regards equality, we find that there are some provisions which confer the same equality as we find between a cat and a mouse, or a horse and an ass. As regards fraternity, I feel that we have shown fraternal love and regard for the permanent services, especially the higher services as well as the high dignitaries of State to whom I have already referred. I do not think I am exaggerating when I say that we set out with good intentions to make a vinayaka, but it turned out to be a vanara as in the Sanskrit proverb:

विनायकम् प्रकुर्वाणो रचयामस वानरम्

Vinayakam prakurvano rachayamasa vanaram. The Vinayaka that we have made resembles the image of a monkey more than the image of God Ganesh.

With all that, there are some very good features in the Constitution. That is why I welcome it partially.

The provisions regarding the integration of States for which the credit goes entirely to Sardar Patel, and the provisions regarding minorities which are there mainly due to his efforts are all very welcome. Then there is the provision regarding property. We have not made it absolutely justiciable. That is again another good feature of the Constitution. We have guaranteed religious freedom. This is another important thing. We have settled the language question satisfactorily. Then, as referred to by me already, there is the question of the oath. God has been invoked in the oath to be taken by the dignitaries of the State. Then there is provision for village panchayats in the directives of State policy. Though Dr. Ambedkar at first stigmatised the villages as sinks of superstition and ignorance or something like that, it is good that we embodied in the Directive Principles the salutary provision for village panchayats. These are all good features and I welcome them wholeheartedly. Then we have abolished titles,—those vulgar distinctions. Untouchability which has been a canker on Hindu society has been abolished. But other features are there which mar the harmony and the beauty of the Constitution. As I said, we are going to have parliamentary democracy in this country. I hope it will work. Unfortunately we have several handicaps in our country; our fissiparous social system with divisions based on caste and sub-caste, creed and religion and notions of superiority and inferiority and strong antipathies and jealousies which form an integral part of our psychological set-up. These impede the cultivation of a democratic outlook, and permeate the very air we breathe. These factors operate sub-consciously rather than consciously. Again, Sir, of the innumerable points of contact between the citizen and the State, each a battle-ground of democracy, only a microscopic proportion will fall within the jurisdiction of the courts, though vastly extended in the Draft Constitution. They, to my mind do not furnish the complete mechanics of democracy. They do not solve the problem of taming power, I hope, Sir, that the democratic spirit of the people who work the Constitution will be adequate to the task. The Constitution itself is only dry bones. After all, it is we, the people of India, who will have to infuse life into these dry bones of the Constitution. I hope it will be worked in a spirit of co-operation, in the spirit of making India, a great nation, making it great beacon light to the whole world, under which

[Shri H. V. Kamath]

will gather all the nations of the world to learn the ancient yet ever new gospel of India, the gospel of peace, harmony and love, bathed in the refulgent light of a Himalayan dawn. I would like to make a suggestion about the ceremony we are going to have on the 26th January 1950. I would suggest, Sir, that the Republic should be proclaimed not at midnight as was done in August 1947, but just before sunrise as is the custom in our Indian tradition, sometime during the first prahar (प्रहर) before sunrise which is called Brahmi Muhurta. Between three and six that morning we should proclaim the Republic and inaugurate the Constitution. If we do it just before sunrise, I think it will augur well for the future of our country.

I would only say one thing more, Sir and that is this: that we the people of India, will not forget our spiritual genius and our ancient traditions. It was Swami Vivekananda who said that the day India forgets God, the day she discards spirituality, that day she will die, that day she will cease to be a force in the world. I hope we will keep alive our traditions in spite of the fact that we lightheartedly forgot to invoke the name of God in the Preamble. Yea, let us work this Constitution in the spirit of divine guidance, under divine grace and blessing. It was Mahatma Gandhi who all in his prayers prayed.—

‘Sabko sanmati de Bhagawan’

सबको सन्मति दे भगवान

Swami Vivekananda exhorted India to rise and chanted the Vedantic Mantram.

उत्तिष्ठत् जाग्रत प्राप्य वरानिबोधत

Uttishthata jagrata prapya varanmibodhata

Awake, Arise and Stop Not Till the Goal is Reached

We have reached our goal. Yet we have got to reach a higher goal, and let us address ourselves to that task and bend our energies to the attainment of that goal, so that in this ancient land of ours the common man—after all a Constitution is only for the good of the common man that is its touch stone,—the ordinary man may have his life and have it more abundantly. It does not matter how many Ministers you have, how many Governors you have, who you win have as President. These do not matter ultimately. A Constitution will live or die in so far as it caters to or hinders the happiness, the life and the liberty of the ordinary man, the common man. It is in his name that we have framed this Constitution; it is in his name that we have struggled for freedom, achieved it and assembled here. Let us work this Constitution in his name. Let us go ahead in his name under the blessings of the Almighty and under His guidance, and with the full co-operation of the people of India. Let us strive to reach the goal envisaged by Mahatma Gandhi and all our prophets, sages and seers, the goal. I would not call it, of Sadhunam-Rajyam or the Kingdom of God on earth; I would simply call it Panchayat Raj. We who are assembled here, let us resolve that we shall not rest till we have achieved that goal which has animated the whole nation for the last sixty years or more, and which I hope will continue to inspire us during the difficult days to come. Jai Hind.

Maulana Hasrat Mohani (United Provinces: Muslim): Sir, May I know if there is any chance of any of the points raised in the speeches of different honourable Members being accepted and introduced into the Constitution now? if there is no chance, then the whole thing is a farce and I do not find any use, at all of this general discussion.

Mr. President : I may inform the Maulana that under the rules there is no room for any further amendments at this stage. I shall have to put the motion at the end to the vote.

Shri Mohan Lal Gautam (United Provinces: General): May I know whether the Maulana is a party to this farce or not?

Maulana Hasrat Mohani : I am not. I have not given notice of any amendment on this occasion. I shall simply oppose the whole thing.

Mr. President : I thought you were not going to speak.

Dr. P. S. Deshmukh (C. P. & Berar: General): May I draw your attention to the word used by the honourable Member and request you to ask him to withdraw the word he has used.

Mr. President : He said he was not moving any amendment. Did he say anything else?

Shri S. Nagappa (Madras: General) : The word "farce" that he used is objectionable.

Mr. President : Maulana, that word is objectionable, Members object to it. This is not a farce anyway.

Maulana Hasrat Mohani : Very well, I withdraw the word.

Seth Damodar Swarup (United Provinces: General): *[Mr. President, the Second Reading of the Draft Constitution has ended and the Third Reading is going on which will also conclude in three or four days. After that the inauguration of this Constitution will be held over till the historic day of the 26th January. All this is good and for that the Honourable Dr. Ambedkar and his other colleagues of the Drafting Committee deserve the congratulations of the whole House, because they have drafted this Constitution with great skill and labour.

Sir, ordinarily it would be expected of me who is a Member of this House that I should have a feeling of satisfaction for the successful completion of our labours. But Sir, permit me to say that at this moment when I am speaking on this Constitution in this House, far from having any sense of satisfaction I am feeling extremely depressed. The fact is that it appears to me as if my heart were sinking at this moment and a slow palsy is overtaking me. This is due to my realisation that in spite of the fact that the British rule ended more than two years ago, the misfortune of the country and its people is that they have not yet perceived in the least any improvement in their conditions as a result of this change. I am afraid that the masses instead of finding any improvement in their lot are beginning to suspect that their lot is becoming worse as a result of this political change. They are unable to perceive as to where all this will end. The fact is that the general public, in whose name this Constitution has been framed and would be passed, sees only despair and darkness around them.

Mr. President, some of our friends thought that so far no change has been apparent in the condition of the general masses, because so far the Constitution and the laws framed by the British Government are in force. They believed that when our Indian constitution is ready, the masses would definitely feel that they are on the way to progress.

But, Mr. President, I wish to be excused for placing the hard reality before you. The people of this country would not at all be satisfied or happy even after this Constitution is completed and enforced. Because what is there for them, in this Constitution, as it has evolved now, and is soon going to be enforced? You may go through it from the beginning to the end, you will not find anywhere in it any provision for bread for the poor, starving, naked and oppressed people of India. What attempt has been made in this constitution for solving their day to day problems? Besides this, it does not contain any guarantee of work, or employment for them. Far from ensuring to them wages according to their work, there is no guarantee in it even for a living wage even for a minimum wage and payment for subsistence.

*[] Translation of Hindustani speech

[Seth Damodar Swarup]

In these circumstances, Mr. President, even though this Constitution may be the biggest and bulkiest constitution in the world, may even be the most detailed one, it may be heaven for the lawyers, and may even be the *Magna Charta* for the capitalists of India, but so far as the poor and the tens of millions of toiling, starving and naked masses of India are concerned, there is nothing in it for them. For them it is a bulky volume, nothing more than waste paper. It is a different matter whether we accept this fact or not, but we would have to admit that even if we ignore the views of the public, we would have to pay attention to the opinion of the great people.

I wish to invite your attention to the opinion of the honourable the Speaker of our Indian Parliament. He says that constitution that has been framed does not at all contain any shade of Indian genius, and is quite contrary to that. If I am not mistaken the General Secretary of the Congress, Shri Shankarrao Deo has also expressed We views about this Constitution in this House. He says that this Constitution is bound to be rejected if a referendum is taken. So even he leaving aside the views of the general public about this Constitution and only taking into consideration the views of such respectable people how can we claim, that the public will be satisfied with it?

Mr. President the reason is clear. This Constitution has been framed by the people who are not the true representatives of the general masses. I have stated previously that the framers of this Constitution at best represent 14 per cent. of the Indian masses. This is a bitter fact. We, who are here in this House as the representatives of the public have failed to fulfil our duty for which we had assembled here due to various reasons and causes such as party politics. It is for this reason that the people of India are particularly faced with disappointment again, as they had seen after the change of Government. Then, we have to consider, what is in store for us? There is no doubt that the Indian masses will never accept this Constitution in the words of respected Shri Shankarrao Deo. This Constitution cannot work permanently in this country.

We have seen that there are some good things too in this Constitution and some nice principles have been enunciated in this, e.g. there is a mention of general franchise and joint electorate, abolition of untouchability. But so far as the principles are concerned, they may be, quite all right. But how far they would be enforced in practice, will be seen when they are put into practice. We see that the mention of Fundamental Rights in the Constitution is a significant matter. But Mr. President, have we really got some Fundamental Rights through this Constitution? I can say emphatically that the grant of Fundamental Rights is a mere farce. They have been given by one hand and taken away by the other. We have been told in plain words that this guarantee about the fundamental rights will not apply in the case of the Acts at present in force, and in respect of libel slander, or contempt of court and the Government is authorised to enact such laws even in future. Besides this, so far as the right of association or the right to go from one place to another is concerned, the Government will have the right to enact any law to take away these rights in the name of public interest so the grant of Fundamental Rights is a farce.

Then, Mr. President, we see that the law regarding property is identical with that contained in the Government of India Act of 1935. The result would be that it would be impossible to nationalise property and there would be many obstacles in effecting such economic reforms as may be in the interest of the public.

Mr. President, it is a matter of surprise, of pain indeed, that while speaking on the Objective Resolution our Prime Minister had said emphatically that he was a socialist. He had also expressed the hope that the Constitution would be of a socialist republic. We listened to all his speech, but when the amendment seeking to add the word 'socialist' with the word 'republic' was moved in the House, it was rejected.

Mr. President, on the one hand we desire that today's social structure should be maintained without any alteration, and on the other hand we also wish that, poverty and unemployment should vanish from this country. Both these things cannot go hand in hand. While in America our Prime Minister said that socialism and capitalism cannot go hand in hand; it is surprising as to how it can be expected to maintain *status quo*, to maintain capitalism and also to remove the poverty and unemployment of the masses. Both these things are quite incompatible. It is felt therefore that starving, naked and oppressed people of India would perhaps continue to be in the same misery as they are today. Besides this even viewing this from other points of view too we do not arrive at any happy conclusion. Nowadays there is a lot of talk about cooperative commonwealth in our country. But what is the actual fact? It is no direction to say in the Directive Principles that the Governments would establish any such thing. To give directives in round about words is different from giving a clear directive for establishing such an order. Still the Congress President wants us to cherish the hope that a classless society will be established in this country within five years. A layman like me is however unable to understand as to how to reconcile the two statements, the one that we hate socialism and want to maintain the *status quo* the other that we wish to establish a classless society in our country while preserving the exploiting group. I cannot see how these two objects which are mutually opposite can be realised. Besides, this there are several minor things which could be accomplished but have not been done.

The demand for the separation of the executive and the judiciary is a very old one—perhaps as old as the Indian National Congress is believed to be. But this Constitution does not contain any definite plan, any adequate provision to separate the executive and the judiciary as soon as possible.

Looking at States, I can say that no decision has yet been taken to end the Jagirdari system. The result would be that millions of peasants of the States would continue to be slaves, of the Jagirdars. Besides this, the farm labourers would continue to be the slaves of the money lenders. Along with this we see that this Constitution contains so many things which are far more reactionary and backward than the provisions of the Government of India Act of 1935. It was provided in the first draft of this Constitution that the Governor would be elected direct by the voters. Later on another proposal was made saying that the Governor would be appointed by a panel. But now the President has been given the right to select the Governors and also to fix their tenure of office himself. It is right that the President will as far as possible use his right properly, but this may lead to a tug of war between the provincial Government and the Governor. It is just possible that the provincial government may have a different ideology from that of the Central Government and that conflict in ideologies may lead to conflict between the provincial Government and the Governor. Besides this the discretionary powers of the Governor are even more reactionary than those contained in the 1935 Act. The Act of 1935 gave the power of individual judgment to the Governor but it was essential for him to consult the cabinet. But now the Governor need not consult the cabinet regarding the discretionary powers and he has a right to regard any subject as coming within his discretionary powers. So we see that in respect of Governor and their too we have gone backward instead of advancing forward

[Seth Damodar Swarup]

Again the President has been given greater powers than necessary in the name of emergency powers, and the centre too has been given greater powers to interfere in the provincial affairs more than necessary. Our Constitutional structure is federal in name, but so far as the administrative sphere is concerned, it has become a completely unitary structure. We do realise that centralisation is to some extent essential, but over-centralisation means more corruption in the country. Mahatma Gandhi advocated decentralisation throughout his life. It is surprising that we have forgotten that lesson so soon after his departure, and are now giving undue powers to the President and the Central Government.

Mr. President, the structure of a modern State is generally based on division of powers between two compartments—Provinces and the Centre. This system is already over-centralised. If we wish to end corruption, bribery and nepotism, the system of two compartments does not seem to be appropriate. For this we needed a four-compartment system. As I had once proposed, there should have been separate village republics, separate city republics and separate provincial republics and they should have federated into a central republic, that would have given us a really democratic federal structure. But as I have just said we have framed a unitary constitution in the name of a federation. This would essentially result in over centralisation, and our Government, which ought to have been the Government of the people, would become a fascist Government. So from this point of view as well, Mr. President, we arrive at the conclusion that the Constitution framed for our country will neither lead to the welfare of our country nor to the protection of those principles on the basis of which we have ostensibly proceeded. This seems to be the reason why the socialist party of India has declared that if and when they happen to capture power, the first thing they would do will be to set up a new Constitution Assembly on the basis of general franchise and that Constituent Assembly would either change this whole constitution totally or would make necessary amendments in it. Mr. President, I would therefore not take any more time of the House and would only say that from the point of view of the interest of the people, high constitutional principles, this Constitution does not deserve to be passed. We should reject this Constitution. But Mr. President we may do it or not, I would submit, and fully believe in what my respected Friend Shri Shankarrao Deo has said, that even though we may accept this Constitution, the people of the country will never accept this. For them this Constitution would not be of greater value than other ordinary Law books. The hopes of the people for the Constitution would remain unfulfilled just as they had remained fulfilled, by the change of Government. If therefore, we wish to retain the confidence of the people, there is still a chance to do so, but if we do not succeed in this task, I am sure, Mr. President, the masses of India and the posterity too will not remember us by any good or respectable name.

Shri T. Prakasam (Madras: General): Mr. President, Sir, this is not the Constitution which I expected for the people of our country, the Constitution which I was expecting along with many others who have been labouring for attaining the freedom of this country, the constitution planned out by Mahatma Gandhi, not only planned out, but also endeavoured to be put into practice Panchayat Raj was the one which he Planned out and recommended to the nation. Before his advent and before his programme was placed before the country, nobody ever dreamt that the people, divided as they were in every respect, would come together under one leadership, under one banner and carry out the orders given by him and the Congress. He was the one man who should have been framing a Constitution, a simple Constitution for the people of this country

that would give relief to all, to the millions. His plan was to educate the millions and to make the fight carried on by them to attain freedom ever since he set his foot on this country after coming from South Africa. You know more about Mahatma Gandhi than myself or than anybody else in this country and you, Sir, were good enough to send a reply while the drafting of the Constitution was in progress, to a letter written to you by one ardent constructive worker, an advocate, an educated man who has spent his time in the villages for a good time. In that letter he suggested about this Panchayat Organisation of Mahatma Gandhi and you replied to him in detail and you were impressed by that because you were one of the foremost followers of Mahatma Gandhi and a copy of that letter was given to me by that friend and that letter was referred by you to Shri B. N. Rau, the Constitutional Adviser. I raised that point elsewhere when we were discussing and everybody was impressed there, but I myself found it difficult to introduce the Panchayat Constitution—the framework of that—into the Constitution that had made considerable progress. So we dropped it and the leadership then suggested that there would be the directive principles introduced into the Constitution. We have got that here now. Therefore the Constitution which I was longing to have was that Constitution. It is only that Constitution that would give really food and cloth and all the necessaries of life to the millions. The millions were ignored during the British Raj and they were ignored in our country even after the British left and we also ignored them and we are proceeding with this Constitution.

The Constitution is a great document and the friends who have been in charge of this framing of this—Dr. Ambedkar is a great lawyer, is a very able man. He has shown by the work he has done here, how he would be competent to be a King's Counsel of Great Britain, to be perhaps competent to sit on the Woolsack only; but this is not a Constitution that we, the people of this country wanted. Mahatma Gandhi when he took up the organization of this country in the name of the Congress at once saw how this country could be helped and how the millions could be helped. Therefore he decided that the whole country should be divided on linguistic basis so that the people of each area would be competent to develop themselves. He not only laid that down as a rule for preaching purposes but he put it into force, carved out the whole country into 21 linguistic areas and he made the people work under that Constitution. As a matter of fact after he had been taken away from us and after we have been enabled to send away the English people from our country to their own country, we should not have discarded the basis on which this country had been educated by him, not only educated but the people of each area had been enabled to carry out the work. What about the Congress work which had been carried out under his direction and under the direction of the Congress and under your leadership and other leadership? The whole thing, how to make their own cloth, their own food and carry out all the items of constructive programme—that had been carried out for 26 years—it is nowhere now. Therefore, I have been sitting here with a painful thought that we had been drifting, avoiding the soul of it as it were.

The Constitution is very carefully drawn up. I have been a student of Constitutional law for a very long time, for over 40 years or 45 years. I have understood the principles of the Constitutions of the various countries of this world. The legal expert here and the Chairman of the Drafting Committee were referring us so often to the American Constitution. What is there in the American Constitution? We can see the essence of it—how 13 different colonies or units came together and were determined to carry on the war against the British, carried on the war and after completing the war, evolved their own Constitution. When such was the case, what was the fear in the minds of the Chairman of the Drafting Committee and also of the legal expert—who has been a very learned

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man and who has been on the top of the legal profession? Their mind was not there as they were not in it. Therefore this Constitution started on the basis of the English Constitution. The Act of 1935 became the basis of this Constitution. We embodied many provisions bodily as it were. They are not of a very extraordinary character, they are not new inventions for the first time by Great Britain. Why should we have been ready to say that we adopt this Constitution of Great Britain of 1935?

Therefore, Sir, I am submitting to the honourable Members of this House who are all persons who have made great sacrifices to achieve the freedom of our country, that whenever it was pointed out that Mahatma Gandhi's scheme was the proper scheme, the whole House rose in one voice as it were, and they demanded Panchayat Raj system. But because it was too late it could not be introduced into this Constitution that we were making; but every one was for that, and every one is referring to the same thing in their speeches during the last two days also, just as they have been doing in the past. Therefore, the Constitution that I was expecting, and the Organisation that I was expecting, for this country was the division on the linguistic basis, which was chalked out by Mahatma Gandhi, which was not only chalked out, for the mere adoption as a principle or any such thing, but actually worked out, for the past 26 years, now 30 years. Even now that system is continuing. Why should we have abandoned that and come to this?

I may say Sir, one word in this connection. People like myself, Dr. Pattabhi Sitaramayya, Prof. Ranga and others who have come from our province, and who have been agitating for separation of Andhra Province, and have been fighting for it for over 36 years could not succeed until now. At last the Congress Working Committee has been good enough to adopt Andhra separation. I thank the Working Committee, Dr. Pattabhi Sitaramayya, the Honourable Pandit Jawaharlal Nehru, the Prime Minister and also Honourable Sardar Vallabhbhai Patel and the other members of the Working Committee for having accepted this. They have accepted it so that it might be started immediately and the whole thing might be worked out. There was a dispute over the city of Madras which could not be solved. There was the Dhar Commission appointed by you, Sir, and that Commission went into the whole question and toured the whole country and arrived at certain conclusions in their report. Relying upon those findings, we demanded Andhra Province, Sir, without claiming the city of Madras, although there was a demand for a separation and for a division and for constituting it into a separate province. This is a question upon which the Working Committee was not able to arrive at any decision. But they were good enough to put it in such a form that that question was left open. And a boundary, commission also has to be appointed. I therefore, thank the Government and all those who were responsible for doing this much.

I also feel that what has been done with regard to Andhra should also have been done with regard to others also who have been agitating for being constituted into linguistic areas. This would not have taken a long time. But there seems to be some fear in the minds of the leadership which prevented them from thinking of separation on linguistic basis. It is not an impossible thing. It is that work and it is that united feeling of all the people, it is that division that has brought this freedom, and the country together. Why we should try to avoid I have not been able to understand. But the two leaders were too strongly opposed to division on a linguistic basis, at this juncture, and there is no one in this House or even outside who has been taking an opposite view to these leaders, particularly so, when we see how these two leaders had been struggling here ever since they took charge of the administration of this country, under the most diffi-

cult circumstances. Take for instance Sardar Vallabhbhai Patel who has brought together all the States into one Union, as it were, who has made the whole of India into one United Union. There was only one man in the history of the world, similarly great man, and that was Bismarck. But Vallabhbhai Patel has out-Bismarcked or out-distanced Bismarck, outshone him. I am not given to flattery or saying good words at the proper time. But you know Sardar Vallabhbhai Patel was described in the British press, in one of the most conservative presses, as Super-Bismarck. Therefore we are all proud of Sardar Vallabhbhai Patel's work and the labours and the troubles which he has been facing, troubles not only from outside and from inside regarding the constitution of the country, but also physical troubles. We know he has been fighting these physical troubles as he has been fighting other troubles involving or relating to the country.

Take again, Sir, Honourable Shri Jawaharlal Nehru. He has just now returned from America. What has he done now? There in his tour he has carried the message of peace, not to our villages or to our districts or to our provinces, but to the whole country and to the whole of America and all the other nations, as it were. And he brought back an answer, as it were, that they were all inclined towards peace today and not towards war. Even the representative of Russia showed this by his recent proposals before the United Nations Organisation. Of course, he was very much distrusted by others, they would not take his words at their face value. But I believe he was quite sincere in asking for peace, and when it comes from Stalin's country, one should accept it and make it a complete success.

And so, India following Mahatma Gandhi's principles and with this Prime Minister of India—with whom I would be quarrelling sometimes for not doing things as I wanted—this Prime Minister carried this message of peace to them, and brought back a reply as it were, I mean the principle of peace to the whole world, and he has justified himself as the disciple of Mahatma Gandhi as far as non-violence, truth and peace are concerned.

Therefore, when these two leaders have been striving here, people could not resist them and press them to understand that the division of this country on a linguistic basis would bring unity and not disunity. It would not create trouble. On the other hand it would give strength and create the power to resist those forces that are raging themselves against our Government or any government in this country. Take for instance the American States. Thirteen States united together and carried on a war, and after the war they made their constitution. but not in the manner in which we are doing it, Sir.

I feel very strongly that we have constituted the Constituent Assembly and carried on the work of framing our Constitution, under the direction of the Secretary of State for India and the Cabinet in Britain. Look at the Independence of India Act of 1947. It is under that Act that we do all this. Of course they had to pass that Act. I do not dispute it, because they wanted to declare publicly through their Parliament that they had severed their connection with India, that they would not be responsible under those sections in the latter part of that Act—the Act consists of only 20 sections—they declared. "We have handed over India to the Indians and we shall not be responsible from this date for anything that may be done by the Indian Government, by the Indians, who take our place. They must also take these responsibilities". If that be the case, they should have asked us to frame our own Constitution after forming our own Constituent Assembly. But instead of that, they wanted to keep it to the very last minute, as it were, under Parliament and so got it under the name of the Indian Independence Act. What is it that they have done? Pre-

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viously they appointed a Governor-General. The Governor-General would be vacating his place when the President is appointed here, and when we pass this Constitution. But he is the Governor-General of King George, and not the Governor-General appointed by us. He has been put there to watch the interests of Britain. Of course I do not . . .

An Honourable Member : Nothing of the kind.

Shri T. Prakasam : No use saying, "Nothing of the kind." I am talking of the Constitution. What has been done here? He has been there carrying on whatever he has to do, as any other Governor-General was carrying on before the British left. So, I say, Sir, I am pointing out the weakness in this Constitution which is being drafted under the auspices of Britain in pursuance of the provisions of the Indian Independence Act. I am pointing out how Britain was interested in keeping a hold over this country even until the day the Indian Independence Act was passed. In section 17 of that Act they say that the Secretary of State should not be made liable for anything that had been done while the English people were carrying on the Government. It was also stated there that the British Exchequer should not be made liable for anything that might have been done by them when they were in office. I have been at this point for the last two or three years. I have been anxious to point out that Britain had done the greatest wrong to the people of this country when it contracted certain loans under Section 315 of the Government of India Act, 1935 and these loans were contracted by the issue of currency notes without any metallic backing. The total amount in circulation before the war started was Rs. 714 crores or so. By the time the war ended when we came to 1948, the total amount came to Rs. 1,214 crores of currency notes. I say, I have been saying, and I said in my budget speech in Parliament the other day that these currency notes that were issued by them during the period of the war without having any metallic security, are not worth the paper upon which the currency notes were printed, and the people of this country who accepted the currency notes and paid the cash into the hands of the British Government should not be made liable. That is my point and it is a point which I wanted to raise. I am not taking you by surprise. Dr. Ambedkar, is the Chairman of the Drafting Committee and the legal adviser of this Constitution-making body,—I wrote to him and gave him notice of a resolution two years back. In that note I pointed out the whole of this business and asked them to have that resolution tabled and placed before the House. I got no notice of it and I could not attend for some time. Afterwards a note issued from Shri Satyanarayan Sinha saying that those who were sitting there should not come here. I have come here on a special/requisition made to Pandit Jawaharlal Nehru. This is the notice of the resolution given by me on 14th August 1949:

"I beg to give notice to move the following resolution on an urgent matter of public interest for consideration and decision before the sovereign body of the Constituent Assembly can proceed to further consideration and further drafting of the Union Constitution."

The Resolution reads:

"This Assembly hereby declares that the huge unconscionable burden thrown upon the people of India by Great Britain by its currency law and currency policy and the resultant so called public debt and liability of crores of rupees created by the issue and expansion of paper currency without any metallic security to be *ultra vires* and further that all such currency notes, so issued are of no value whatever as against the people of India in view of long and protracted struggle by the people of India for their political and economic freedom."

Well, Sir, when this notice was given, can the President of the Drafting Committee, or can the Legal Adviser, or can anybody say that this matter was not before them? I brought it to their notice: I also said that this matter must be considered before the Constitution Act of this Constituent Assembly was proceeded with. Therefore, I am submitting that in drafting this Constitution we have been drifting, drifting and drifting, without knowing exactly where we were going. This Rs. 1,214 crores of currency notes were printed by Britain just before they went out of this country, making a provision in the Indian Independence Act that they should not be made liable for all that they have done. Would that be *intra vires*? I have been considering that it is *ultra vires*. If they had contracted it on the eve of their departure they are liable for it. Even after this Constitution is passed they will stand liable for this. What has been the effect of this? I am requesting you and the honourable Members of this House to consider a while. This printing of Rs. 1,214 crores of currency notes without metallic security, making the people of this country liable has brought about inflation and has been responsible for the increase of prices in this country. Experts have been saying that they will decrease the prices and that they will do this and that, without touching upon this point-without cutting away this Rs. 1,244 crores of liability cast upon the people. It is a matter of life and death for the people. That is what happened.

I would like to point out in what a difficult position we have been while we have been going through the completion of this Constitution and we have come to the last stages. Now, I have been waiting here to tell the House and to tell you, Sir, how we have been omitting to do certain things which will seriously affect ourselves. What is the good of framing a Constitution which will not take a matter of this importance into account and do something to relieve all this burden? Who else can relieve the curse of inflation that has brought this increase of prices, which in turn has brought about all kinds of troubles? This Government has been taking ever so many other steps to get rid of this inflation. How can they get rid of this inflation if they do not touch the bottom rock of that Rs. 1,214 crores. All these English people, while they were ruling they introduced these currency policies. They introduced this inflation and also devaluation. So many currency commissions have been held and at the end of each Commission they have invariably passed orders to suit the convenience of the British people.

When currency notes to the tune of one thousand two hundred and fourteen crores of rupees were printed unauthorisedly, there should be some arrangement for their withdrawal. In fact, this has been done in some countries. But nothing to that end has been done here and that is why I am apprehensive that we are in for trouble. How has this devaluation come upon us, Sir?

Mr. President : I do not wish to interrupt the honourable Member. But I am afraid that he is speaking on points which are not germane to the Constitution we are discussing today. These are points which could very well be raised, for Government to take up (and Government might be blamed, or whatever else the House would like to do it could do to Government) in another place, but not here.

Shri T. Prakasam : Sir, I do not want to wander about and want to confine myself to the scope of the discussion on the Constitution. The point which I was referring to just now arises in this way. The Constitution which we have drawn up ought to have removed the anomaly of continuing the exchange ratio of the rupee at Is. 6d., adopted by the Indian Government a long time back. That has, unfortunately, not been done. That is how the point I was making is germane to the discussion.

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Now, Sir, I come to another point regarding the provision on freedom of person that we have adopted. We made a provision after such consideration and discussion that for three months a person could be detained without trial. It shocked me and it shocks me now that we should have made such a provision. We cannot justify our position in the face of the world. It is strange that we who had been trained and disciplined for over thirty years by one person, the great leader who had given peace not only to this country but also to the rest of the world, should make such a provision. Why should it be, Sir, that for three months a person could be detained without trial? I am sorry that we have adopted it.

One great service that this Constitution has done is by way of removing untouchability and making Harijans and Scheduled Castes feel that they are brought on an equal footing with the rest of the population. For that we do deserve some credit.

I am also glad about the introduction of the village panchayat system in the directive principles. The execution or the fulfilment of it depends upon you and others, who would be in charge of this country and the Government. I understood that in the United Provinces, Pandit Govind Ballabh Pant's administration has set up panchayats and Assam had established them even before that. If this example is followed by the provinces of India the day of redemption of the millions of India would not be very far off.

Then another matter, Sir, about which I should like to say a few words is about adult franchise. I am glad that out of any fear or suspicion adult franchise has not been modified in any way. When we started framing this Constitution, it was the idea that the Governor should be elected. I felt glad about it. But unfortunately this provision has undergone a thorough modification. People may agree with me or may not agree with me. Unless you trust your own people and take them into your confidence they will not be able to deliver the goods. In fact our country has stood firm now for three years since the work of drafting this Constitution began and even before that they have been honest, straight and loyal to the Government. We should not, therefore, do anything which would lead them to think that we are not trusting them.

I should then like to refer to the introduction of the new article 365 by the Chairman of the Drafting Committee. According to that article if any province is not ready to obey and carry out the orders of the Government here that province may be declared as not fit to be within the Constitution. This is only an adaptation of section 93 of the Government of India Act under which the administration of a province could be taken over by the Governor. This is no good for us. This is not a provision that we should introduce after we have fought for the freedom of this country in the clearest possible manner. This is not the way in which we should develop democracy in this country. Whatever defects there may be in provinces, you must allow them to be corrected by themselves.

You must not interfere for this and that and fall upon them and ask them finally to get out because they are not willing to obey. That is not the way in which democratic constitutions can be built up or worked nor the people's position sustained in the country. If we wish to carry the people with us, give them freedom. I am one of the sufferers with regard to this provincial autonomy also, but I do not complain that for the sake of that you must take away the right of carrying on the administration in their own way. It is a retrograde step-which we should have avoided altogether.

Another point which I should not fail to point out on this occasion is centralisation. Government was anxious, and this Constitution-making body was also anxious to make everything central, to give every power to the Centre. What happens to the units? What happened to the units in the United States? Fifty three or fifty-four units were separate and they declared themselves sovereign powers and carried on the war; they established their own constitutions. Similarly in Switzerland you have got 22 Cantons. Switzerland is one of the most model countries in the world. During the last two world economic distresses Switzerland was the only country which had not been affected. It was a country which was divided into 22 units each one having sovereign power, carrying on the administration in a perfect manner, in a most admirable manner for the defence of the country and for the betterment of that country. It is a flawless country today. Similarly is the United States for which our Prime Minister had so much to say. He gave a warning to us that America is a perfect country, that it can defend itself against anything. At the same time he said that you must not go on merely repeating the slogans about America but must adapt yourself. In the same sentence he pointed out, as a contrast to it, the Gandhian technique. He is a person who could take the Gandhian principles, who could take the other principles, combine them, go to America and give them the peace message and to the other countries also, and, do his best to bring about peace. But he has not been able to give attention to the Gandhian technique of the constructive programme and of the Organisation of the country or a division of the whole country on a linguistic basis.

Thank you, Sir.

Prof. Shibban Lal Saksena (United Provinces: General): Mr. President, Sir, this is an historic occasion in India's history when this August Assembly is about to conclude its labours. Free India will now have its first free constitution after unknown centuries. India is an ancient land and its history goes back to times immemorial. There is much ancient literature extant. But I do not know of any written constitution framed in ancient India providing for the governance of the whole country available today. We know of the codes of Manu and all other great law givers of ancient India, still no elaborate democratic constitution providing for the governance of the entire sub-continent from Cape Comorin in the South to Gilgit in the North and from Ledo in the East to Peshawar in the West was probably ever made. There were great Emperors of India whose empire comprised the entire sub-continent as, for example, Asoka. We have details of certain departments of his Government, but we do not possess the written constitution of the country in those days. So after, a lapse of innumerable centuries and probably for the first time in known history, chosen representatives from every part of the country have assembled together in a Constituent Assembly and given themselves a Constitution.

But we cannot forget that this Constitution is a constitution for the partitioned India which comprises only about 4/5th of territories comprised in our motherland known as Bharat about which Gurudev Rabindra Nath Tagore sang:

*Jan-gana mana- adhinayaka, jaya He Bharata-bhagya-vidhata
Punjaba-Sindhu-Gujrata-Maratha-Dravida-Utkala-Banga
Vindhya-Himachala- Yamuna-Ganga Uchchhala-jaladhi-Tiranga*

The partition of the country is the greatest tragedy that has occurred in India in recent times. It was the price that we had to pay for our freedom. The British did not leave our country because of any sudden, love that they had developed for us by a change of heart; they were compelled to leave by the force of circumstances by world forces combined with the strength, of the national movement and its marvellous leadership under Mahatma Gandhi. What followed is well known. That most unnatural division was forced upon the country.

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I am convinced that so long as this division lasts, neither India nor Pakistan can be at peace. In the re-union of the two parts of Bharat into one single Sovereign Democratic Republic lies the ultimate salvation of both the parts. The dream of free India which I dreamt during the last 30 years will only be realised when this Constitution becomes the constitution, not only of partitioned India but of the whole of India prior to partition. That I believe is the natural destiny of our motherland.

My thoughts go today to the millions of my countrymen, those unknown heroes and martyrs in our freedom struggle during the last 92 years since the first war of India's independence was fought in 1857. It is because of the sacrifices of these millions of our countrymen that this day has dawned. Among those heroes and martyrs, we cannot forget those great patriots who have been now left in areas known as Pakistan. My heart is heavy when I remember the figure of Khan Abdul Ghaffar Khan and his thousands of Khudai Khidmatgars who spilled their blood for India's freedom and who are today languishing in the jails of Pakistan. I was one of the staunchest opponents of partition and I feel we are guilty of betrayal of the Khan Brothers and the millions of Khudai Khidmatgars, whom we left in the lurch by agreeing to partition. We cannot also forget the millions of our countrymen in Eastern Bengal, the home of Bengal revolutionaries who first lit the fire of freedom in our country. India shall not be truly free until those parts which have been cut as under are reunited. Here also we must not forget the millions of refugees, who either died or lost their all and became destitutes as a result of the partition which we accepted as the price of our liberty. They are certainly martyrs of our freedom. Above all, we cannot forget on this occasion the Father of our Nation, Mahatma Gandhi, who lighted in most of us the torch of freedom and who did not live to see the fruition of his labours. I cannot also forget today other great leaders like Lokmanya Tilak, Lala Lajpat Rai, Deshbandhu Chitranjan Das, Pt. Madan Mohan Malviya, Hakim Ajmal Khan, Pandit Motilal Nehru and others who lighted our path. I particularly wish to remember Netaji Subhash Chandra Bose who fondly hope is still alive somewhere and whose Indian National Army and its glorious exploits in South East Asia fired the Indian Army and the Indian Navy and the Indian Air Force with patriotic and national sentiments and drew the day of freedom nearer. I wish to pay my homage to to all these patriots, heroes and martyrs of the nation on this momentous and historic occasion.

I am very sorry that the House did not agree to accept my amendment, by which I had wished to pay homage to the heroes and martyrs of our freedom struggle and to the Father of the Nation in the preamble at the very commencement of this Constitution. I feel that the House was not wise in doing so.

Coming now to the Constitution, I just say at the outset that it is a compromise and has all the defects of a compromise. It is a compromise between men of various views, both conservative and radical, inside the Congress Party. In the transitional period from slavery of a thousand years into newly won freedom, it was probably natural that we should go through this present stage which is reflected in this Constitution. I cannot call it the constitution of the free India of my dreams. I can, therefore, support the motion of Dr. Ambedkar for its adoption only in this spirit. I am convinced that very soon when the period of transition is over, representatives of the Indian people, elected by a conscious electorate on the basis of adult suffrage, will recast this Constitution and frame a constitution which will realise our dreams. I would have wished that my amendment for an automatic revision of the Constitution by simple majority once at the end of ten years from the commencement of the Constitution had been accepted by the House under the limitation of the prevailing circumstances, I am sure, that a better

Constitution could not have been made. For this achievement, therefore, I congratulate all those responsible for it, particularly the members of those committees, who under the chairmanship of our leaders evolved the principles of the Constitution in the reports submitted by them of the Union Powers Committee, the Provincial Constitution Committee, the Minorities Committee and numerous other Committees. The principles enunciated by these committees were accepted by this Assembly during the First Reading and the Drafting Committee then put them into legal shape. I would have very much wished that this Draft Constitution had been discussed by the House by going into the committee stage, so that all amendments could have been discussed threadbare and decision could have been taken by a majority of the whole House and not only by the majority of the Congress Party.

Under the procedure adopted, the Drafting Committee could not get the advantage of the free opinion of the whole House and decisions of the Congress Party alone became binding upon it. I personally feel that the constitution has very much suffered on this account. Out of about 10,000 amendments which appeared on the order paper from time to time during the course of the last one year, I think this House had opportunity for discussing hardly a few hundreds. The rest were all guillotined inside the Congress Party and were not moved in this House because the Party did not accept them. Congress Party meetings became meetings of the real Constituent Assembly, and this real Assembly became the mock Assembly where decisions arrived at the Congress Party meetings were registered. But by their very nature these Congress Party meetings could never be a substitute for meetings of this whole House going into the committee stage and coming to free conclusions on the various amendments tabled.

There has been some criticism of the length of time taken by this Assembly to prepare the Constitution. I think the criticism is most unfair and unjustified. So far this Assembly had only II sessions, the duration of all of which was about 200 days. During these sessions, the Assembly usually sat only five days in the week. So the working days had been only about 120 in all. The expenses incurred on the Constitution during the last three years are less than a crore of rupees. I do not think either that this time is too long or this expense is too great for framing the Constitution of Free India. I personally feel that parts of the constitution have been hustled through and due attention could not be paid to them. If, in spite of this, we have been able to produce a tolerably good constitution, I think the credit must go to the wisdom, the ability and the untiring efforts of the Drafting Committee and its learned Chairman. Credit is no less due to Shri S. N. Mukherjee and his able staff. I think India must be proud of the able draftsmanship and the capacity for infinite labour of Mr. S. N. Mukherjee. We have really discovered him during the framing of this Constitution.

Coming now to the provisions of the Constitution, I regard the provision of adult suffrage to be its greatest merit. The common man in India will now be the maker of his own destiny. I cannot understand the apprehensions of those who fear adult suffrage. We must have confidence in the common man. Adult suffrage has been one of the main demands of the Congress throughout the period of its struggle. We must, therefore, be proud at the dawn of this day when that dream has been realised. After adult suffrage I give importance to the Fundamental Rights. In the Fundamental Rights, equality between man and man has certainly been ensured in our Constitution. There shall now be no untouchability recognised by law. The abolition of untouchability has been compared to the abolition of slavery in America, but I think untouchability is a greater curse than slavery. Equality before the law of every man has also been guaranteed. But liberty has been a casualty in our Constitution. I think Sections 21 and 22 are the darkest blot on this Constitution. I could never have conceived that in the Constitution of free India, detention without trial will be permitted under the fundamental rights of the people. Having been convicted

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to total penal servitude for some 31 years in six trials on six different occasions during the Freedom struggle and having passed 10 years of my young life in prison dungeons and condemned cells in the days of our slavery under the British rule, both as a detenue and as a convict, I know the tortures which detention without trial means and I can never reconcile myself to it. An equally great blot on the Constitution are sections 358 and 359 which provide for the suspension of the Fundamental Rights and the methods of their enforcement during an emergency. This is, I think, a mockery of Fundamental Rights. I also regard Article 31 about property as the charter of capitalism in this country. I am sure, the representatives of the people elected on the basis of adult suffrage will change this Article which makes all socialisation of the means of production for the community impossible. The Directive Principles of State policy which have been so beautifully described in Part IV cannot be realised so long as Article 31 forms part of this Constitution. I would have wished that these Directive Principles had been incorporated as Fundamental Rights in the Constitution. I know it was not possible to give effect to them from today but we could have said that at the end of 10 years the Directive Principles would automatically become Fundamental Rights. I had sought to achieve this by my amendment No. 559 in Volume I of the List of Amendments, with regard to the four rights of Economic freedom which are guaranteed to citizens in the Soviet Union. I wish within 10 years India should be in a position to guarantee these same fundamental rights to its citizens. By my amendment No. 773, I had wished to provide for obligations of citizens. These obligations are contained in the Soviet Constitution. At present our constitution does not provide any such obligations and I think, this is one of its weaknesses

Another Article on Fundamental Rights which I consider to be most unfair to the people is Article 28, where it has been said that no religious instruction shall be provided in any educational institution wholly maintained out of State Funds. I consider religious instruction, by which I mean instruction in true religion and its eternal principles, to be the most important part of a child's education. Ban on religious instructions in State schools may result in the Prohibition even of the teaching of books like the Gita and the Ramayana in schools. I am sure peoples' representatives will not tolerate this ban and the article will soon have to be amended. This is an instance where secularity has gone too far.

The chapter on Directive Principles is, I think, the most hopeful chapter in the Constitution. I fondly hope that the principles enunciated in it as the ideals to be striven for in free India will be given effect to, and incorporated in the laws of the country at no distant date. Prohibition of cow slaughter throughout the country can by itself fire the imagination of the common man in India. I wish the ban on the slaughter of cow, which is the Kama Dhenu the mother of plenty, had been made absolute, and given a place in the Fundamental Rights

With regard to the machinery of administration, I would have very much preferred the President of the Republic to be directly elected. I would have also liked single chamber legislatures. I have also opposed throughout every interference with the powers and the independence of the Supreme Court and the Auditor General. I regard the Supreme Court as the guardian of the liberties of the people and the Auditor General as the watchdog of the finances of the State, I have also opposed through the arbitrary powers of the President which means the Executive, and I would have desired ultimate authority in such matters to vest in Parliament. I also do not like the powers given to the President to issue Ordinances. I only hope that when the Constitution is recast all these undemocratic features of the Constitution will be removed.

My criticism of the Constitution does not mean that I am blind to the achievements which we have made during these three years. I consider, this framing of the Constitution has by itself been the greatest single achievement .of ours during the last three years. The barriers to the dawn of freedom which the British Government had erected by the artificial creation of the problem of minorities, the problem of Princes in the Indian States and the Heaven-born Civil Service, have all been wiped of as if by magic in the short space of the last 2 years. The delay in the framing of the constitution has enabled us to incorporate in this Constitution similar provisions for the administration of the 566 Indian States which have now been transformed and integrated into nine provinces and put on a par with the other units of the Union. This single achievement will be regarded as the greatest task ever accomplished in any Country. Our beloved leader, Sardar Vallabhbhai Patel has earned the gratitude of the future generations by this momentous achievement through a bloodless revolution. Here I cannot hide my disappointment at the attitude of Kashmir Government which has insisted on a separate constitution under Article 370. But Kashmir is not Sardar Patel's responsibility. Sardar Patel's second greatest achievement has been his solution of the problem of minorities in his capacity as Chairman of the Minorities Committee. I cannot here forget to mention the name of Shri H. C. Mookerjee, the great Indian Christian leader, who can be regarded as mainly responsible for the happy solution of the minorities problem. He infected all the minorities with his sturdy spirit of nationalism and the nation shall never forget the debt it owes to Wm. Another great achievement of the Constitution is the solution of the language problem. I am not at all happy at the compromise arrived at and I consider the period of 15 years fixed for the full fledged adoption of the Hindi language ,as the national language of the country far to long, but I do hope that in actual practice, the people will force the pace and the present love of English and everything English will soon become a thing of the past.

I am also sorry that the authorised version of the Constitution should not have been passed in the national language. I would have very much wished that the Hindi translation which you will send out under your authority as the certified translation were passed by this Assembly as the authoritative version of the Constitution. I am afraid when the supremacy of English from this country is gone, our countrymen will be put to difficulty in interpreting this English original of our Constitution. I am almost certain that very soon the newly elected representatives of the people will insist on passing the authoritative version of the Constitution in the national language.

Lastly Sir, I cannot forget to voice my bitter disappointment at our decision to maintain our link with the British Commonwealth of Nations. This I consider to be derogatory to our Sovereignty. I do not believe that the leopard can change its spots overnight, and I feel our association with the British . Commonwealth can never be of any real use to us. Disastrous devaluation of our currency is the first dividend we have reaped from it. I hope very soon we shall have shaken off our slave mentality and this infatuation of everything British will then be a thing of the past, and we shall stand in the world as a completely independent nation holding our head high and ranking amongst the greatest nations of the world.

In the end, Sir, I wish to join in the tribute that many speakers have paid to your patience, skill and independence in guiding the deliberations of this august and historic Assembly. We have all felt that you have given us the fullest liberty to express our viewpoint on every aspect of the Constitution. We have also appreciated your sturdy independence in your rulings on the various points which arose during the discussions, from time to time, I cannot forget your ruling when you permitted me to move my amendment to the resolution for joining the Commonwealth. This was vehemently objected to by no less a person than the Prime Minister. But in a very serene and unconcerned manner, you gave the Ruling.

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“The Rules of the House allow it”. To posterity and future generations, the example set by you will remain a beacon light for guidance and emulation. Sir, I thank you for the opportunity you have given me to express my views on this momentous occasion.

The Honourable Rev. J. J. M. Nichols Roy (Assam: General): Mr. President, Sir, I am very glad to come here to give my hearty support to the motion moved by Dr. Ambedkar that the Constitution as settled by the Assembly be passed. I consider that this Constitution is the best that could be produced in the present circumstances in India and in the world. Though there are defects no doubt, though we would have liked to have had some provisions in another form, yet, Sir, I believe that this is the best that could be done under the present circumstances. I am glad, Sir, that I have had a part in the framing of this Constitution, though it may be in a very small way. The whole country has had a part in the framing of this Constitution either by way of criticism or by way of suggestions. The Draft Constitution was placed before the country over two years ago, and everyone of us had a chance either to criticise or to send suggestions, and everyone of us here in this Constituent Assembly has had a part in the framing of this Constitution. Therefore we can say that this is a Constitution for the whole country and by the whole country. While I am speaking about this Constitution to be a satisfactory constitution under the present circumstances of India. I cannot forget the conditions that existed at the ‘time when we first assembled here about three years ago. At that time we were under the shadow of the British Cabinet Mission. We were given the award by the Cabinet Mission that India would form into Groups. There were three Groups to be formed. Assam was to be grouped with Bengal, the North West Frontier Province, the Punjab and Sind were to form into one group, and the other provinces of India were to be formed into another group. At that time we members from Assam were afraid that this group system would be forced upon us, but everybody else there seemed to be willing to come under that group system though in spite of their wish. We were laughed at for being against the group system. We felt that it would affect the very life of the people of Assam if we were grouped with Bengal. Our reasons were known to the members of this Assembly. We were afraid that we were going to lose. In reality our fight was for life and death. We felt that we could in no circumstances be grouped with Bengal. We were in such great difficulty at that time that the Premier of Assam, Mr. Gopinath Bardoloi, had to approach the Working Committee which practically declined to listen to Assam request, and he had to appeal to Mahatma Gandhi and ask him to save us from, this calamity, and it was Mahatma Gandhi who saved us from that situation. We must not forget those days and the members of Assam were almost ridiculed by some people that we were only thinking of Assam, and that we were not thinking of the whole of India. We had to fight for our very life. I am glad to say that it was Mahatma Gandhi who saved us from that situation, when he said to Mr. Bardoloi thus, “if you do not want to be under this group, nobody on earth can force you to be in it”. Think of what would have been the condition of India today, what would have been the Constitution we would be having today, if we had accepted that group system. India would have been a different country altogether. The powers that we possess now would have been different. My friend, Mr. Brajeshwar Prasad, has always pleaded for centralisation, but we would not have had the Constitution that we have now with quite an amount of centralisation but for the fact that we fought against that group system. Whether our fight was good or bad, we had to fight in order to save, ourselves from what we considered to be a bad way for the people of Assam and for the whole country. Sir, Assam is a frontier province. If that province had not been saved, if that

province had gone into the hands of somebody who is riot in favour of the whole of India, if Assam were in the hands of an adverse power, the whole of India would have gone too.

Now, Sir, we are very glad for the Constitution that we have today, a Constitution which will unify the whole of India. Though we have suffered a loss of a portion of the country, though by partition we have suffered a great deal, especially the border areas round Pakistan, yet though unwillingly we have had to choose the lesser evil. I consider that what we have today is the lesser evil than what we would have had if we had not fought against the Cabinet Mission plan. I was one of those who spoke in this House and also in the Party meetings that the Cabinet Mission plan was only a recommendation of a friendly Labour Government, and that we could go contrary to that recommendation, that we could pursue our own course and that we could declare ourselves as the sovereign Constituent Assembly of India that could frame our own Constitution. I am glad that we have done that, that we have had the privilege of framing our own Constitution in our own way. Sir, that opposition has resulted in the division of India, has brought Assam especially under very great distress. Some parts of our province have had to suffer on account of the attitude of the Pakistan friends towards our areas. They are taking a very strong attitude in regard to commerce and trade between the border areas. We have had to suffer on account of that. We look to the Government of India to help these border areas which are today in great distress in view of the fact that the Pakistan people will not purchase the agricultural produce which come from the borders of Assam, which are hill districts, and also some parts of the plains districts, and this has caused a great deal of trouble to our people in these border areas. We are hoping that the Government of India would do something to relieve the people of this distress.

Now, Sir, I want to speak regarding the financial position, the relation between the States and the Central Government. We were of the opinion that there should be a definite percentage mentioned in the Constitution for the allotment of finance to the States especially the Producing States, from the revenues derived from the excise and export duties on tea, on petrol and on jute by the Central Government, but we were not successful in our attempt in this direction. The States have been placed in the position that they are at the mercy of the Centre. The Centre shall now have to help the States, at least some of the States which are financially deficit, especially the provinces of Assam and Orissa. On account of this financial distribution, we in Assam shall be in great difficulty indeed. When the 26th of January comes, India will be declared a Sovereign Democratic Republic but what will be the condition of our poor province Assam? Unless the Central Government comes to our rescue it will be impossible for Assam to carry on. Even now, Sir, Assam is in deficit. By over 2 crores of rupees we shall be in deficit and unless the Central Government comes to our help and utilise the power which has been given to them by this Constitution, to come to the help of our Province which is in financial difficulty, it will be impossible for Assam to carry on and there is going to be a financial collapse altogether. It is very important, therefore, that the Government of India should attend to this immediately. I know that I am speaking to this Constituent Assembly which is making the Constitution, but not to the Parliament, but, Sir, there are many here who are Members of Parliament, who will no doubt be interested in the Province of Assam and in those provinces which are in financial distress. When we have made the Centre strong, we have made the President powerful to act in an emergency, it will not be to the credit of the Central Government or to India to leave this one Province to collapse. I trust, Sir, that Parliament as well as the Central Government will attend to this immediately; otherwise Assam will collapse financially. There must be some way by which our Province should be

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helped in these difficult times. I am speaking of this here because I feel distressed on account of this. Had it not been for the fight Assam had had at the commencement of this Assembly we would have not been able to get the Constitution as we have got today. After Assam had been the cause of turning the course of events in India, and this Constituent Assembly has had the freedom of making this Constitution as it is today, I believe this country will not leave Assam in a state of financial collapse. India must come to our rescue immediately.

The next point I wish to speak about, Sir, is regarding citizenship. In the matter of citizenship we have made man and woman equal. A man who marries an alien still holds the citizenship and a woman who may marry an alien also must have her own citizenship kept. There should be no difference at all. If there is no difference between man and woman in all other aspects, why should there be any distinction between man and woman in respect of citizenship? Sir, Parliament is given the power to make laws regarding this; it must take this into consideration and must not allow a woman to be differentiated from a man in this matter. I believe that our women—in the whole of India would agree to this, and would rise up and fight for their right. There is a country which I know that does not make woman lose her citizenship by marrying an alien. India must not fall below such a standard.

Shri Brajeshwar Prasad (Bihar: General): What about the children?

The Honourable Rev. J. J. M. Nichols Roy : The Children will be citizens of that country where they are born.

Sir, we have had great difficulties to overcome in making this Constitution. We have had the problem of minorities and I am glad that this problem has been solved. I must congratulate our Christian leader. Dr. H. C. Mukerji for a move that there should be no reservation on the basis of religion. I also was in favour of this of reservation. For Assam Sir, I said there should be no separate constituency for the Christians and afterwards all the Christian representatives in this Constituent Assembly agreed to the same proposition, for we felt that no one should be differentiated from another on the basis of religion. Religion must not be the basis for making a difference between one man and another man. We are glad for that, that this reservation of seats for any community on the basis of religion has been abolished. The difficulties in regard to the Indian States have been wonderfully solved. The credit goes to the Ministry of States which has done wonders in this respect.

Now, Sir, I want to speak about another thing and that is regarding the Sixth Schedule. I myself am personally indebted to Mr. S. N. Mukerji, the Draftsman, Sir. B. N. Rau and Dr. Ambedkar for giving special attention to the drafting of this Sixth Schedule. I am also indebted to the members of the Drafting Committee who gave us a chance to speak before them. Also I am indebted to our own Premier of Assam who has had a very sympathetic feeling towards the Hill-people of Assam. The Sixth Schedule concerns the hill-districts of Assam in which the hill-men in Assam live by themselves in their own territories, who have their own language and their culture and the Constituent Assembly has rightly agreed to the recommendation of the Sub-Committee of the Advisory Committee in which my honourable Friend, Mr. A. V. Thakkar also was a member. The Sub-Committee agreed that there should be councils for these different districts in order to enable the people who live in those areas to develop themselves according to their genius and culture. I am glad also. Sir, that the Khasi States have been incorporated in the Sixth Schedule, for that will enable the same people of the district of Khasi-Jaintia Hills and the Khasi States to have one administration. I am very thankful to all those who have helped us in this matter, I must speak a word in regard to the criticism of my

honourable Friend. Mr. Chaliha who has twice in this House criticised the powers given to the District Councils under the Sixth Schedule. I think he is mistaken in doing so. If he thinks that the people who live in the hill districts of Assam are not capable of running their administration and utilising the power given to them by the provisions in the Sixth Schedule, he should come and help them, as a brother to help his own brothers in the Hill areas and in this way contribute his intelligence to them in order to enable them to carry on according to their own ways, and that is the thing that will give them satisfaction and help them to remain peaceful. The people of the Hill areas are afraid of exploitation and that is the reason why they demand that there should be District Councils by which they can make their own laws to some extent and also develop themselves according to their own genius and culture. I am very glad that there are many Members here who have realised the desirability of such an administration and I am very thankful to the Constituent Assembly for not opposing this Sixth Schedule which contains very good provisions for the people of these Hill areas. I am sure if those friends who live in Assam who are interested in the progress of these Hill areas which are really the frontiers of India, will help them, there will be no difficulty in having an administration there which will be very good to the people and might in some way be a model for panchayats in other parts of India. There are today, Sir, financial difficulties and distress in these areas which are in the frontiers of India. The Government of India's help is immediately necessary.

Just one more word before I sit down and that is with regard to article 48 in the Directive Principles. Here is a provision regarding the prohibition of cow slaughter. I was wondering whether this provision would mean the prohibition of cow slaughter at all times and of every kind of cows and cattle. I thought in my own mind that that was not the meaning. If that be the meaning of this provision which I do not think it is, it would place a terrible burden on the State. Think of the millions of cows that will float round the country without any fodder, and sickly, and the amount of money that will be spent on them and the terrible burden it would be on any country. Hundreds of them will die in the fields without being taken care of. It will not be economic at all for any State to prevent the slaughter of cows under all circumstances. I consider that this article would only prevent the slaughter of cows which are milch cows and draught cattle, which will be of benefit to people. If it be otherwise, I consider that that would be a blot in this Constitution and an oppression also to some of the people, especially to the Hill people of Assam, who eat beef and who keep cattle for the sake of eating. It would also be an oppression to the people who slaughter cows in sacrifices like the Moslems; even the Hindu Gurkhas of Assam sacrifice buffaloes at the time of the Durga Puja. There would be a great deal of disturbance and unrest if this article would be interpreted to mean that all cattle should be prevented from being slaughtered at all times and under all circumstances. This would act against the fundamental rights. I think that this is not the meaning of this article.

I thank you, Sir, and all the honourable Members who have contributed to the making of this Constitution and I congratulate you, Sir, for the way in which you have conducted this Assembly. I also congratulate the Drafting Committee for the laborious work that they have done and also all the officers who have had a share in its drafting and the taking down of speeches of members. I was very gladly surprised to see the efficiency of the reporters in taking down the speeches. They have done very well indeed. I thank you, Sir. May God's blessings be upon our country in working this Constitution.

Dr. Raghu Vira (C. P. & Berar: General): * [Mr. President, we the people of this country have secured our independence and freedom. We are going to have a Republic of our 'now as also a Democratic State. We have been assured that during our present life we shall be provided with economic prosperity and social progress. But, Sir, a question yet remains still unsolved. I do not find

* [] Translation of Hindustani speech.

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in this Constitution any reference to the position of our ancient culture. Whenever any nation, such as British in India sought to consolidate their rule by striking deeper the roots of their domination into the heart of the subject nation, struck at the very cultural bonds of that nation and thereby infeeblled it altogether. They take three steps to reach this objective—an attack on the language an attack on the religion and an attack on the historic ideals of the subject nation. This was what England also did with us. It brought our religion into contempt. But I need not go here into the question of how it was done. But it is sufficient to say that they gave no place to religion in the sphere of the State. Moreover this significant word of the Sanskrit language was equated by them the Englishmen and their camp bearers to religion which is much narrower and restricted than the former. The fact is that *Dharma* never meant and can never mean religion. I think the word Panthe may properly be translated as Religion but I do not think that Religion can ever be taken to connote Dharma. But the Englishmen made a deliberate use of this for their own ulterior purposes.

The Englishmen imposed their language on us in place of our language. In order that our language be restored its due place and the constitution be framed in it we felt necessary that all things which the English people had deliberately destroyed in order to consolidate their rule here should be restored, so that our country may recover its soul again. But I say with regret that the word 'Dharma' does not find any mention in this Constitution. When I raised this point with a friend here he replied that the Constitution was a law and it could contain only those matters which could be subjects of interpretation in law courts. But, Sir, my submission is that this country is not eager to have new laws alone, it wants earnestly to rise to higher planes than that of the laws.

There was a time, Sir, when our country had glorious place of its own and had a Dharma of its own. At that time Sir, we were high in the scale of nations—as a matter of fact we were the teachers of the world. But the Englishmen reduced that glory of ours to dust and ashes. The Englishmen, specially the English members of the Indian Civil Service wrote histories of India in which they shoed our countrymen to have been primitive and insignificant, to have always been victims of division and dissensions and to have always been defeated in battle. It was all the more necessary, that we should have made some effort to provide avenues for the expression and development of genius in the sphere of culture. But this has not been done. I think, Sir, that it was absolutely necessary for us to have put this glorious word in our Preamble. We have the phrase the glorious triflet of words—Liberty, Equality and Fraternity from the political slogans of the French resolution, but it is my submission Sir, that these words have or never had a revolutionary appeal in this country, and so far I can Judge these words would not be able to promote a revolution in this country. I do not suggest that we should not take anything other countries. We can borrow from other countries but only those things which are likely to prove of use for our country. But when we could give a place to these three words in our constitution, could be not have given a place also to sum of the ancient words of our own country. Could we not for example use the expression Ram Rajiya in this constitution—an expression which even our children in village understand and appreciate. Again we have in our literature the expression 'Matsa Nyaya' which suggests that the bigger fish should not swallow a smaller fish. It was a duty laid on the King that the rich should not be permitted to exploit the poor—that is to say there should not be exploitation of the people, nor the exploitation of the poor by the rich nor even the exploitation of the weak by the strong. But this significant word Matsya Nyaya—this ancient word which has come down to us since thousand of years—which connotes all these has not found a place in our Constitution. I may refer here to a suggestion which I made during the course

of my conversation with the President of the League of Nations which I visited to in the year 1931. I told him that the motto of the League of Nations should be '*Ma Gradhat*' (do not covet) which is to be found in the Ishopanished and the Yajur-Veda. But such expressions and others which stand for ideals regarding the conduct and spiritual upliftment of men and which satisfy their physical and spiritual needs do not find any place in this Constitution. This country was the originator of the Republican system of government. Again it was this country which spread this system to the other parts of the world. Besides it had the biggest democratic Organisation which was engaged in a system propagation of a new ideal. Its principal mottos were '*Dharma Shamam Gacchaimi*' (I submit to the commands of Dharma) and '*Sangham Sharnam Gachami*' (I surrender myself to the Samgha or Order). These in effect that I dedicate myself to my duty and that I shall not and cannot run away from it. I ask "should not such a motto have been included in the Constitution of this country?" It is my submission that this motto is to be found in our country from the Rigvedic time down to the present age. I feel that we have suffered from the malady of division and dissensions—the malady of internecine conflicts. I think that it is regrettable that in view of this malady the ideal of San Gachaothwam '*Sam Baddivam San Vo Manasi jantam*' march together bound together are consciousness of Jantam has not been placed before us here. Another ideals we find in the assertion of King Ashwapati. He said

नमेस्ते नो जनपदे नकदर्यो नमद्यपः नाना हिताग्नि विद्वानः

which means that there is no thief or robber, no coward, and no drunkard nor any ignorant person in my State. But these ideals do not find any place in our Constitution. I therefore ask you, Sir, whether the mere fact that a statement is made in Hindi or in our language robs it of dignity and gravity, when we say in Hindi that two plus two are equal to four we lose their mathematical significance and we can retain the mathematical significance by expressing this idea in English. If not I fail to see why we could not have expressed in our language the ideals which we have put in this Constitution in terms of English language, of an alien history and a foreign syntax.

There was another ideal, Sir, which was also followed in our country. It is contained in the verse which says:

कार्षायणं मवेद् दण्डेयो यत्राचः प्राकृतो जनः
तत्र श्रीमान् मवेददण्डय सहस्रमिति धारणा

It meant that where a common person could be fined for an offence one hundred Rupees a king or a rich person should be fined for the same offence one thousand Rupees. The offence committed by a rich man was thus decided by a fine which may be a hundred times or even one thousand times than that awarded on a common man. But I do not find any such thing in this Constitution. If the facts I place before you from the history of our country are not to your tastes you may not accept them. But I do ask that if Sir B. N. Rau our constitutional adviser could go to Ireland, Switzerland or America to find out how the people of those countries are running their governmental system, could you not find a single person in this who was well read in the political lore of this country who could have told you that this country has also something to contribute, that there was a political philosophy in this country which had permeated the entire being of the people of this country and which could be used beneficially in preparing a constitution for India. It is a matter of deep regret to me that this aspect of thought was not considered at all by us.

My time is running short and I would therefore conclude my speech after making three points. I am very glad that in the matter of language which always is the repository of civilisation a decision has been taken in favour of Hindi. All the friends here and all the provinces have voted for its adoption. I am very

[Dr. Raghu Vira]

glad that some one of our languages has been adopted as the official language of the Union. I, however, feel sorry that even in accepting it, it has been provided that it will become the official language only after fifteen years. It is not only I who had felt sorry for this but also several other friends also have felt the same. My sorrow and humiliation, however, folded hundred times when I come to have a talk with a few foreign ambassadors and diplomatic representatives in our country. They twitted me by remarking that for many years the Imperial sway of English will continue in your country. I would appeal, therefore, friends here not to forget that Englishmen are still having their hold in this country. I know that not a single diplomatic representative of any other country liked this decision of ours for they know well the deep inter-relationship between language and Politics. The decision with regard to nationalities in Europe is always on the basis of language, and therefore they are well aware of the political significance of a language in the life of a country. When you give a place to English in your country you come logically to be bound up with the English People. Some French friends, who came to this country, often asked me why there was no arrangement for teaching French or Spanish in the Universities of this country. I am sure that if there had been arrangement for the teaching of French and Russian in our Universities that would have given considerable satisfaction to our French and Russian friends because then they could have been sure that you would study their literature and value their friendship. I, therefore submit Sir, that it has not been desirable for us to have retained English for another fifteen years. The fact is that Hindi had been kept so far away out of fear that it may not enter the seat of government. As against this English has been given a position in our Constitution which it did not have even during the British regime so much that not only the rule to be made by the Parliament would be in English but even a rule made by the Delhi Electric power Authority to the effect that their tram service would function from 5 A.M. to 11 P. M. that would also have to be made in English under the provisions of this Constitution. This injustice to Hindi was not considered sufficient in itself. Even the alien form of numerals has been imposed on it. The fact is that we are being treated even worse than children. We are told that the form used in Roman is the international form of the Indian numerals. This is in fact adding insult to injury. I am sure that if Gandhiji had been alive he would never have accepted the retention of English by a provision in our Constitution for another fifteen years.

Besides I find that real masters of this country still continue to be the Bureaucrats who should as a matter of policy be its servants only. Nor have we made any effort to eliminate litigation from this country. I am afraid that in the next fifteen years the roots of English influence in this country would have become twice as strong as the English people were able to make in their rule extending over a period of hundred and fifty years. The effect of all this is that the reins of power would remain in the hands of the English knowing classes. I am however hoping that after elections on the basis of adult franchise many people who do not know English would be returned to the Parliament and they would certainly dethrone English from its ruling position. I am convinced that that boycott of English is absolutely necessary for the progress of the country.

I would also like to say a few words about the boundaries of India. We have absorbed and assimilated the Indian States of the country. But we had permitted the division of our country and I do not find any limit in this Constitution that this country would become one again. Those who have been students of the culture and history of India know fully well that the natural boundaries of our country were on the Vakshu which in greek is termed Dkhum and which the Englishmen termed as the Oxus. But that boundary has now received back to the Ravi. Even in the days of Moghuls Afghanistan was a part of India. Besides a big slice has been, cut from our heart—I refer to East Bengal being cut

off from the midst of Bengal and Assam. I ask you, Sir, could we not strive to unite these again. I do not know how this unity would be brought about—whether by means of war or by peaceful means. Future will reveal the means to be adopted. But I am afraid this is not an objective today. We do not dream that India that is now partitioned and fragmented would become one again, and that it shall not be further divided.

I feel that our indifference to our duty to the nation has been much greater in the matter of Kashmir. The Maharaja of Kashmir offered to accede to India. The people of Kashmir also desire to accede to India. More particularly the people of Jammu Province of that State want to accede to India unconditionally. Again the people of Ladakh desire that they should be permitted to accede to India irrespective of the decision taken with regard to Kashmir. But in spite of all this we find that in this Constitution our Parliament still have no power to make any laws for that State. Our soldiers went to Kashmir to drive the invaders from there. They have shed their blood there and have undergone untold sufferings and hardships. Even then the flag of India does not fly in Kashmir. Side by side with it and their flag has to be kept flying there. But I fail to see the reason for flying another flag there. It is a matter of deep regret to me that even after having spent so much money and shed so much blood we have not yet succeeded in making Kashmir our own. Even today in our politics Englishmen continue to wield great influence. We have no doubt sent the-Englishmen away from our country but they continue to rule over our minds even now. I am reminded Sir, of the famous words of Lord Macaulay which he had recorded when the education began to be imparted in English. He had said that as a result of western education a race of persons would arise in India who would be English in every thing except their skin. Alas the proof of the truth of the prophecy is before our eyes today. It is only foreign ideals that have been incorporated in this Constitution. It has nothing Indian about it. I however, hope that some years hence this Constitution would not remain in the form in which it has been passed, and that it will come to acquire a genuine Indian character, and would fulfil the basic and fundamental requirements of the people of this country.]

Shrimati Renuka Ray (West Bengal: General): Mr. President, Sir, we are at last reaching the final stages of our Constitution-making, in three years. Three years, naturally, may appear to be a long time to frame a Constitution. But it must be borne in mind that since this Constituent Assembly first came into existence, swift-riding changes came in our country. With the partition of the country, the territorial orbit of the constitution-makers was circumscribed, while with the transfer of power, this House became a Sovereign Body, drawing up the constitution of a free country, and acting also in the dual role of Parliament. Thus, the first seven months of its labour were largely wasted as changes had to be made. Much of the time of the Constituent Assembly was also spent in dealing with emergency situations and the day to day problems of Parliament. Again, Sir, with the integration of the Indian States, even changes which were not contemplated a year ago had to be made. Sir, when this country was partitioned and provinces like my own province and the Punjab were dismembered, those who were not our friends thought and expected that the further Balkanisation of India was imminent. Who could have thought at that time, which of us conceived, that in two short years, all the Indian States, including Hyderabad, would be come a composite parts of the coordinated whole, and that for the States and the Provinces in a common measure, we would be drawing up a constitution for the entire Indian Union? Sir, living as we do in close proximity to these events that have taken place, it is difficult for us to realise the full significance of the bloodless

[Shrimati Renuka Ray]

revolution that has taken place and which stands as an eloquent testimony to the genius of Sardar Patel. I feel that it is only posterity that can give due appreciation to these events.

Sir, turning now to the Constitution, I must say that it is a very voluminous constitution that we have drawn up. It is perhaps the most voluminous in the world today. I was one of those who had believed that it would have been better not to have entered into such a welter of details, but to have drawn up a constitution on more general lines. Sir, a written constitution, however, elastic, must, to a very large extent, be a rigid constitution. It would have been better, I think, to have eliminated as far as possible rigidity, by not going into too many details. But the argument that held with this House was that we were concerned with numerous complex problems, that living conditions in this country differed so much and so widely that much detail was necessary. But for the life of me, I cannot understand why we had to go to such details as to put in the salaries of high dignitaries of the State, like the President and the salaries of Judges, in the Constitution. Why should the Constitution thus usurp what are really the normal duties of Parliament? Apart from any question of the amounts of salaries that have been put in, I should like to point out that in the modern world, where money is always changing in value, a sum of Rs. 5,000 today may tomorrow be worth only 500 or 5. So in the Constitution what purpose can be served by prescribing the exact amount of the salaries?

Sir, turning to the Constitution as it stands, in broad outline, though there may be many flaws, and one very major transgression against the very objectives of our Preamble, I feel on the whole this Constitution can fulfil the objectives for which we have drawn it up.

It has after all been drawn up by men and women who represent this country but who belong to very diverse cultures, different outlooks, with varying ideas on many subjects and thus the constitution had to be drawn up in common agreement and as a matter of compromise: and therefore it may be said—though each of us individually may have much to say on a great many of the clauses—on the whole we have been able to achieve a measure of common agreement.

So far as the fundamental rights of this Constitution are concerned, I think in the case of the majority of them, if they are properly explained to our people there is nothing that will not win their approbation and the approval of all. I should like in particular to refer to one fundamental right which makes a tremendous difference and really does bring in equality: “The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.....”. This right is a justiciable fundamental right today enforceable through courts of law, and if there are any laws, social and which remain as a contradiction to this principle of a justiciable right, those laws will have to be overridden.

It is very unfortunate that although the political rights are in these fundamental principles, the economic rights of citizens have not been able to be put in as justiciable rights today. Conditions in our country are such that it has not been possible for us at the present moment to have them as fundamental rights which are enforceable through courts of law. They have been put in as directives of State policy. Sir, it is also all the more unfortunate that among these directives of State policy, are some of the most vital rights of citizens and along with them are lumped many matters of much lesser moment. At the same time, I do not think there is anything to despair because it is possible for the Parliament and the Government of the future to bring these rights which are now directives as economic rights, and as fundamental rights, in the near future.

Sir, the content of democracy is not political democracy alone, and although it is quite true that we have laid down a Constitution which with adult suffrage has brought political democracy to this country, it is equally true that this Constitution has not been able to provide as effectively as possible for the economic rights of the citizens, although there is no bar in attaining them.

I said a little while ago that there is one great flaw, one great transgression, in the Fundamental Rights which is a blot on this very Constitution. While every other economic right is in directives of States policy, the right to hold and acquire private property alone remains as the fundamental justiciable right. Not only is it there in article 13(f) but it is further entrenched because of article 31 of the Fundamental Rights. It is entrenched in such a manner that the Parliament of the day has not the final authority to even determine the amount and value of the compensation that has to be paid when property is acquired in the national interest.

Sir, the very exemptions that have been made in article 31 show how firmly these rights are entrenched. These exemptions are in regard to zamindari property in certain provinces and even for these there is a time-limit. So that in the case of all other forms of property as well as in the case of zamindari property which cannot be legislated for in the prescribed time-limit, Parliament will have little voice. There was a great deal of confusion on this matter, I feel. There were many who seemed to think that if it was Parliament who had the final right to lay down the manner of compensation it may so happen that no compensation at all would be paid. Sir, I am sure you will agree with me, and the House also will agree with me, that no constitutional authority could ever have laid down any such principles in which no compensation whatsoever was paid. Therefore, I consider that there was a great confusion of issues when this point was raised and I feel, and I would humbly submit, that many of us did not quite realize what we were doing when we allowed this clause in the present form to be included in the Constitution.

Posterity may well say of us that here, we did try to lay down the economic structure of future times, for all time, perhaps there is only one compensation, one consolation that we can by amendment of the Constitution change this, and I am sure Sir, that very shortly it will be necessary to bring in such an amendment.

After all, a Constitution is but a paper document. It is the way in which it is worked that will determine its success or its failure. We are the framers of this Constitution and in our humble way, as a compromise amongst so many, we have done the best that we could have perhaps, although we must consider that there are many flaws left. But it is the architects who will actually implement this Constitution, who will give it life and breath, who will really determine what manner it will be worked. It will be to them to make of it something worthy and worthwhile and also it may be that they can mar it, distort it, maim it and make those very fundamental principles and rights which are meant for the security Of citizens be used in such a way as to bring about the detriment of the citizen. it is really the architects of this generation and the next we are going to put this Constitution into working, on whom will depend a great deal, its success or its failure. It is not for us to say whether we have done our job well or badly. Is is only posterity that can really judge of us. There will be, as I have said, need for amendments which some of us feel must come in the near future. In the light of the experience of the working of this Constitution, there will be need for many other adaptations to bring it into conformity with and adapted to the need of the genius of our race.

[Shrimati Renuka Ray]

Sir, before I conclude, I should like to join with those who have expressed their gratitude to you for the fortitude and the patience and the sweet tolerance that you have shown to the Members of this House.

I would also like to express my thanks to the able members of the Drafting Committee and its Chairman, and particularly I should like to say a word about Mr. T. T. Krishnamachari who has put in as much effort and as much energy as this galaxy of brilliant lawyers amongst whom he has on more than one occasion brought to bear a humanising touch. Our deep gratitude is also due to Sir. B. N. Rau, the Constitutional Adviser who without prejudice, explained legal intricacies to us and made them clear.

Sir, finally I would like to say that may it be given to us to be able to work this Constitution in this generation and in the generations to come, in such a manner, that the lofty ideas that the Father of our Nation laid down may indeed become a living reality for the people of this land. May Gandhian socialism be a practical contribution of this country to the world of man.

The Honourable Shri K. Santhanam (Madras: General): Mr. President, Sir, on many an occasion during the last three years I was feeling impatient at the slow process of our constitution-making. I was apprehensive lest something should happen, to delay indefinitely our Constitution. It would have been an irretrievable disaster. We all know what happened in China when constitution-making was unduly delayed and when finally attempts were made to implement that Constitution it broke down. It is, therefore, fortunate that we have concluded our labours.

Looking back, I feel that these three years have not been too long. In fact, it has enabled us to draft a better constitution than it would have been possible if we were able to finish it a year ago. Many criticisms have been made about this Constitution. My honourable Friend Mr. Naziruddin Ahmad has complained about drafting. But reading it as a whole, if we apply the criteria of clarity and precision, I think we have made a very good constitution indeed.

Sir, my honourable Friend Mr. Pataskar, with some justice, criticised the inroads into Provincial Autonomy that have been made. I agree that in some matters unnecessary provisions have been introduced, making it appear as if the Provincial Autonomy under this Constitution is much less than that even under the Government of India Act of 1935. But, again, I would suggest that we should see things in a proper perspective. I do not think that the quantum of Provincial Autonomy under this Constitution has been diminished and this quantum is justiciable. It is protected by the Constitution and the courts have been even strengthened in the process. In fact, the drifting of power from the original draft to the final draft has been from the Executive to Parliament and from Parliament to the Judiciary. I am not sure that it has been wise, but that has been the drift and as a result we have got a Constitution which is federal in character and the federalism of it is so well protected by the Judiciary that it cannot be broken except by a change of the Constitution. Therefore, I do not think that Provincial Autonomy, as such has suffered materially.

Sir, the one great thing that we should appreciate in our, Constitution and which forms its bedrock is that the entire Constitution rests upon the will of the people of India as a whole. It is the Union aspect that is very important in the light of our past history. Sir, if we made the residuary powers rest with the provinces, then it may mean, that the sovereignty rests more on sections of the Indian people, not on the Indian people as a whole. Today it is the Indian people as a whole whose will has been embodied in this Constitution.

In this connection, we have to realise that the Constitution, so far as the Indian States are concerned, does not rest upon the Covenants. The Covenants have value only to the extent they have been embodied or recognised in the Constitution. The integrity of India does not depend upon the covenants which have been agreed to by the States Ministry with the other States. They were only preliminaries to persuade them to come into the Constituent Assembly. When once the Constitution comes into existence, all these Covenants derive their authority only from the Constitution. It is the Constitution that, is the supreme and fundamental law. There is no provision whatsoever for any kind of severance of any part of India as defined in the Schedule except through the process of amending the Constitution itself. Therefore, only the people of India as a whole can allow any part of India which has been included in the Schedule to go out of India. Without that, no part by its own will can ask for any kind of severance or separation. That is a great thing.

Shri K. Hanumanthaiya (Mysore State): Nobody has claimed that right.

The Honourable Shri K. Santhanam : I do not want the representatives of Indian States to claim any right as accruing from the covenants.

Sir, I was rather surprised to find my honourable Friend Seth Damodar Swarup complaining that this Constitution will not be accepted by the people of India, and that it does not give them what they want. I would like to know what he wants. This Constitution enables the people of India to do anything they like. If I understand him correctly he complains that this Constitution prevents the people of India from doing something. It does not impose upon the people of India anything. There is nothing in this Constitution which prevents the people of India from enforcing a fully socialist republic. But he wants that we should prevent the people of India from exercising their free will by imposing, upon them something from outside. Sir, this Constitution is meant to make the will of the people prevail and there is nothing in this Constitution which will in any way prevent that.

Sir, I do not want to go into the merits of the Constitution. I think we are assured of the fullest democracy that any Constitution can give. How that democracy will work, to what extent it will be utilised to convert it into not only political democracy, but into industrial democracy, into social democracy, that depends upon those who will work that Constitution; upon the general will of the people of India and the leaders who will be produced by the people of India. No Constitution can provide such things. All that a Constitution can provide is that the will of the people shall prevail and I think this Constitution has done it to the fullest extent. Therefore, Sir, it is necessary that, instead of indulging in carping criticism, we should from now develop the idea of the sanctity of this Constitution. It is only by making the people believe that through this Constitution they can achieve all that they want that it will become sacred, that no one, neither military power nor any other power will dare to break the Constitution through force or fraud. That is the great thing that is necessary. The imperfections of the Constitution can be amended in course of time by suitable amendments. I think the amendments which will be required will be very few. No amendments may be required at all for many decades to come. The present Constitution gives as many and as full powers as the people are likely to require in the near future. Therefore, I would like that steps are taken to popularise the Constitution. I would like to make a suggestion, Sir, that every Member of this Assembly should get your autographed copy of the Constitution which he may hand over as heirloom to posterity.

Shri R. K. Sidhwa : That is not an original suggestion: the President has already made an announcement to that effect.

Mr. President : To what announcement does Mr. Sidhva refer?

Shri R. K. Sidhwa : Sir, the announcement to the effect that the Constitution after completion will be presented to the Members with their autographed signatures.

Mr. President : I did not make any such announcement; but that might happen.

The Honourable Shri K. Santhanam : I have the suggestion to make that a properly bound Constitution autographed by the President should be given to each Member to be kept as a heirloom for future generations. I would also suggest that such copies should be sent to all public institutions. The Universities should also be asked to make the Constitution a compulsory subject for some decades to come and every graduate should pass a test in this Constitution so that the provisions of the Constitution may become universally familiar.

Sir, I would also suggest that as you have already promised early elections should be held and the Constitution should be fully implemented as soon as possible. If there is much delay between the commencement of the Constitution and its full implementation by Parliament, the value of the Constitution may be diminished and it may not gather sufficient influence with the people. Therefore, it is necessary that the elections should be held as early as possible—early in 1951 at the latest. I hope this will be done.

Finally, the work of the Drafting Committee is, to my mind, beyond all praise. Especially during the last few months they have been so hurried, so much pressed for time that it is remarkable how they did their work. I should also mention that it was not only on the open floor of the House that the Constitution has been scrutinised, but much more severely within the Congress Party meetings. I do not want to mention names, but a group of people in the Party took the greatest pains to scrutinise every clause and every article and a great deal of improvement was made in those meetings. But for their scrutiny the Constitution would not have been so good as it is. On the whole we have done a good job and hope this Constitution will go down to future generations as the greatest work done in the present generation.

Mr. President : Before we rise, I would like to know from the House if they would like to sit in the afternoon. (*Cries of "no, Sir", and "One hour in the afternoon"*). The suggestion has been made to me that, today being Saturday, Members have other engagements and therefore we may not meet in the afternoon. If that meets the wishes of the House, I have no objection. Do you not wish to meet today at all?

Several Honourable Members : No afternoon session, Sir.

Mr. President : It seems Members do not want to have a session in the afternoon. If that is the wish of the House—I think the majority are of that view as I can gather now—then we shall meet at 10 A.M. on Monday.

The Assembly then adjourned till 10 of the Clock on Monday the 21st November, 1949.

CONSTITUENT ASSEMBLY OF INDIA

Monday, the 21st November 1949

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.

DRAFT CONSTITUTION—(Contd.)

Mr. President : We shall now resume further discussion of the Constitution. Sardar Bhopinder Singh Man may speak.

Shri H. V. Kamath : (C.P. & Berar: General): Sir, before we proceed with the discussion of the Constitution, permit me to invite your attention to the fact that I have given notice of a motion that the Assembly do take into consideration the question of a National Anthem for India. Will you be so good as to tell the House whether the House will debate this question and, if so, when?

Mr. President : We held a meeting of the Steering Committee on Saturday last; but unfortunately this motion was not before us at that time. So we did not consult the Steering Committee on this question I shall again call a meeting of the Steering Committee for considering this matter.

Shri H. V. Kamath : Will this question be taken up in this session or in the January session?

Mr. President : I shall have to place it before the Steering Committee before I could say when we can have a discussion of it in the Assembly.

Sardar Bhopinder Singh Man (East Punjab: Sikh): Sir, the various aspects of this Constitution, so far as the general trends are concerned, have already been discussed by the previous speakers. I do not think I will be able to improve upon their comments. In a general way, however, I would refer to the over-concentration of power at the Centre which has almost reduced the States and the different constituent units to mere glorified corporations. I feel, Sir, that it will leave very little scope for the different constituent units to develop. Their progress is bound to be very restricted, and the very essential things for the proper growth of democracy which are actually to be found from below will not have a fair play; but the argument has been advanced that in the present state of affairs when we are a new State, probably it is essential that we should have more power at the Centre. The very nature of this argument leads us to conclude that this is a just temporary phase and I feel that eventually we shall have to bring in amendments, let me hope, very soon, which will leave more autonomy, more power, to the constituent units. In this respect, I feel that Kashmir has escaped with a very enviable position in the Union and I feel jealous of it.

Another aspect to which certain speakers have referred, and they have actually objected to it is that prohibition has not been incorporated as an immediate task before the country. I am glad, Sri, that it has only been incorporated as a policy to be pursued by the different units and as the realities of the situation

[Sardar Bhopinder Singh Man]

demand. Many of the, far-reaching reforms, constructive projects, are being held up simply because we are short of funds. There is the question of inflation too, and I feel that when we talk of prohibition and about its being brought about immediately in the country, I feel it is just a mental luxury that we are going to have. Otherwise, so far as practical things go, I am afraid that many of my friends who are bent upon killing recreation and pleasure wherever possible shall have to wait for some time. I am reminded that in the Punjab this prohibition as elsewhere has to be enforced by officers who do not themselves believe in prohibition. In the villages, when they go to check illicit distillation, the orders were to destroy the jars used for the distillation of illicit liquor, but the village police who went there, instead of destroying the jars, drank the whole of the liquor, and when questioned, they said that the order given to them was "that the people who distilled the liquor should be dispossessed of it and we have done it. Instead of spilling such a nice thing in the dust, we made a better use of it and we drank the whole of it." When such is the case, I am afraid that we must first bring about an atmosphere of acceptance of prohibition, and then only we should try this wholesale prohibition.

Thirdly, my main and primary object in coming forward to speak is that I am surprised that not many speakers who have preceded me have referred to the minorities aspect of this Constitution, except perhaps for one speaker, Rev. Nichols-Roy, who said that he was very glad that the concessions given to the minorities have been done away with. I am reminded of how Rev. Nichols-Roy day after day was fighting for tribal concessions, tribal safeguards, and got these tribal safeguards. I may remind him that tribal feeling is as good as bad as any communal feeling and, when he has escaped with those nice things, to come and advise us that communal feeling is bad is just out of place. When we started to frame this Constitution, there was anxiety in the minds of the framers of this Constitution to give full satisfaction to the minorities. As the days passed by, the atmosphere was cleared, trust was given and received, and confidence was reposed in each other and many knotty problems were solved by mutual consent. Now, Sir, the impression has gone round and I can say this so far as my own community is concerned, that towards the latter days of the framing of this Constitution, the minority question which was such a sacred trust with the majority, was brushed aside and lightly brushed aside and that without the consent and wishes of the representatives of the minority communities. I feel that it is a deviation from the earlier trends which evinced anxiety to give full satisfaction to the different minority groups.

Sir, as the House is constituted today, we are expected to give the reactions of the various sections that we represent. The fact remains that we here represent different sectional and communal interests. I will be failing in my duty if I do not give you the reactions of my own community, the Sikhs of the East Punjab, so far as this Constitution goes. Their feeling is that they cannot give unstinted support or full approval to this Constitution. They remember how in the beginning, so far as the minorities were concerned, it was agreed originally that all the minority groups will be given due representation in the Services compatible with the efficiency of the administration and that there will be a special Officer at the Centre and in the provinces to watch the working of the Constitution so far as these minorities are concerned. They feel that towards the latter days of the framing of this Constitution, that attitude was changed and different articles were incorporated in the Constitution brushing aside all minorities except the Scheduled Castes. We feel that this change was very lightly brought about in spite of the advice of Sardar Patel who said in the draft Report that the decisions arrived at should not be lightly changed. In spite of that, it was lightly changed—I can say at least so far as the Sikhs are concerned—without their wish.

We are quite emphatic about it that this is a deviation and contrary to the earlier practice that whenever any change was sought to be made, the representatives of the particular community concerned were consulted on that. In this case, however, it was not done. Everyday, Sir, we are receiving telegrams, resolutions of protest in the Sikh Press which has been hotly agitated over this. This has left a bitter taste and they are surprised as to how decisions earlier; arrived at were changed towards the closing days of this Constitution, making. Much has been said that the Sikh Press which has been hotly agitated over this This has left a bitter with the Hindu Scheduled Classes and they will be treated on a par with the other Depressed Classes; but Sir, if it had been done in the spirit of conceding a just demand and not in the spirit of sacrifice, or concessions, much of the bickering would have been avoided. We find, Sir, this very decision too that to treat the Sikh Scheduled Classes as well as the Hindu Scheduled Classes has been diluted in such orders that have been issued and the Sikh Scheduled Classes will not be treated alike or on a par or will not be included in the Schedule in the Patiala State or any-where else in the whole of India. Sir, it passes my imagination how a Sikh Depressed Class who is considered to be economically suppressed and submerged is not to be considered so because he was only a few miles away in Patiala while he is considered to be quite backward only in East Punjab. So far as the United Provinces are concerned, I am quite sure that the Sikh Depressed Classes invariably come from the lowest strata of society and there they are not to be given any concessions which are to be given to their counterparts, I mean their Hindu brethren. Such dilutions have spoiled the grace of this concession too. Now the power has been given to the President to include all the depressed classes in that Scheduled Class. At this time of the day, Sir, I request and repeat my request that the suppressed, backward Sikh Scheduled Classes should be given the same concessions, should be treated alike every where in the whole of India, equal to their counterparts.

I might explain a situation, Sir. It has not been explained so often and sometimes there seems to be some misunderstanding. Because of the social and economic close-knit ties in East Punjab and a sort of spiritual affinity between the two, invariably one brother is a Hindu Scheduled Caste and the other brother grows long hairs and he is a Sikh, but so far as the job or profession is concerned, it is absolutely similar. Both are treated alike. He may be a Sikh, but he is not allowed to draw water out of the wells. His real brother, born of the same parents, one is a Hindu and the other is a Sikh; he is mending the shoes and the other is also mending the shoes; the one is cleaning the latrines and the other is also cleaning the latrines and simply because one happens to grow long hairs, he should not be given the same opportunities which the other, his real brother is getting. I feel it is a recognition of certain facts which exist today and not a concession.

However I feel that it is not the lifeless structure of a Constitution or the written word that ultimately counts. As time passes there are bound to grow certain conventions Which are more akin and near to realities, which are more dynamic in character and I feel, Sir, that ultimately it will be the inherent good sense of the people that will count and not the letter but the spirit which shall prevail, and people here in the country will have equal opportunities of justice in every sphere, the sphere of administration and economic structure of the society.

Kazi Syed Karimuddin (C.P. & Berar: Muslim): Mr. President, I congratulate the Drafting Committee for the stupendous work they have done and I have also to congratulate Mr. Naziruddin Ahmad for the arduous work he had undertaken for which he did not receive a word of thanks from the Drafting

[Kazi Syed Karimuddin]

Committee. I particularly thank Dr. Ambedkar and congratulate him for his brilliant advocacy and the task he had undertaken in drafting this Constitution. I know that he had great handicaps and one of the instances of that handicap is the amendment that I had moved regarding the illegal searches—searches of houses and persons—which he had accepted and which was carried by the House and which was defeated after a week's time after its postponement.

Sir, there is no doubt that this is a very solemn and historic occasion. This is the happiest day in the life of the nation that we are framing our own constitution after centuries of bondage and foreign domination and that today we are the masters of our destiny and that the Constitution that we are framing is ours. We may disagree or agree with it. Sir we are liberated, but the Constitution does not guarantee economic freedom to all classes. In this Constitution there is no flexibility. The amendment that had stood in the name of the Prime Minister, the Honourable Pandit Jawaharlal Nehru that the provisions could be changed within five years by a simple majority. has not been moved. So today if it is framed by a majority party or by people of one creed, it is very difficult for the next generation to change it unless the two-third majority is secured. So we have not only framed this Constitution for us but we have inflicted it on the next posterity. I say it was our duty to keep flexibility in the Constitution and this we have not done.

Sir, I am very proud that India is proclaimed to be a secular State. The provisions in article 9 to 30 do not make any discrimination on grounds of religion, race or caste and there is equality of opportunity in public employment and in holding and disposing of the property.

Sir, the communal bitterness or the communal discord that is existing in India today must be done away with. The Constitution must be worked out in the spirit in which it is enacted. My earnest appeal is that we should live up to the ideals and it should not be said that we do not practice what we profess. Sir, today I find that the policies of the Defence and the Railway Departments are moving us towards economic annihilation and I submit that if these provisions regarding the equality of opportunity of employment have been accepted in the true spirit then the unsecular activities existing in these departments must be put a stop to and it should not be a disqualification to be a Muslim in India. I am sure that the majority community will create trust and confidence in the minds of Muslims in order that they may regard this country as theirs.

Another problem to which my honourable Friend, Mr. Man has referred to is the minority problem. Sir, I take pride that I was the first man to move for the abolition of the reservation of seats at the time of the second reading of this Constitution, but I had pleaded that there should be proportional representation. Proportional representation was not given and the abolition of the reservation of seats was granted. Now it is very clear that the privileges and rights which we had enjoyed for the last 60 years exist no more and we depend on the good sense of the majority in this country for our privileges, I have only to say:

“Tamasha ahle Karam dekhte hain”.

We look to the generosity of the majority in this country, for our future. We accepted this because it was the wish and will of the majority. Those who have accepted in this House have no representative character. I maintain. Myself, or Mr. Tajamul Hussain or Begum Aizaz Rasul after the dissolution of the League Party have no representative character. Therefore, my submission is that we are embarking upon an experiment of a very huge magnitude. Whether

the Muslims, without any safeguards, in view of the communal bitterness in the country, would succeed in the next elections: whether they would be taken in the services, is a doubtful proposition. I hope and trust that the top leaders of the Congress, particularly those who are responsible for this abolition of this separate representation, will see that in the future a spirit of co-operation will prevail and the Muslims will get their full share in public life. I really thank Mr. Kapoor from Agra who had made a reference in this speech while moving an amendment that the majority community should realize the great responsibility which is placed on them by abolishing the system of representation.

Another thing, Sir, to which I seriously objected and to which even today I object is the emergency powers given to the President. It is an admitted fact that the President is not elected on adult franchise. He will be a creature of the majority party. His actions will be in keeping with the wishes of the majority party. The opposition parties are not likely to get a fair deal. If the majority party wants that the Constitution should be suspended, for the reasons given in the sections, it can be suspended. Provincial autonomy, in my opinion, is only a sham institution. If the opposition party is elected in some of the provinces and the Centre does not want them to continue, under any pretext under any of the provisions of the law, the Constitution can be suspended. Therefore, my submission is that the Centre should see that in matters of policy the Constitution should not be suspended. It is only when there is domestic violence or when there is a rebellion or when it is impossible to carry on the Constitution in the provinces that the Constitution should be suspended. As has been said in one of the recent cases in America, The Constitution of the United States is a law for rulers and people equally in war and peace and covers with the shield of its protection all classes of men, at all times, and under all circumstances. No doctrine involving more pernicious consequences was ever invented by the wit of man than that any of its provisions can be suspended during any of the exigencies of the Government. Such a doctrine leads directly to anarchy and despotism: I hope and trust that after giving trial to these provisions, within five or ten years, they will be repealed and perfect freedom will be given to the provinces by the Centre.

Another objection to the Constitution is the absence of the words 'without due process of law' in article 15 and the limitations on article 13. Without these words, and with the limitations on article 13, I maintain even today very seriously that there is no scope for full civil liberties in India. When there is an invasion of the Fundamental Rights by the Legislature, when these words 'without due process of law' are not there, then if the procedure laid down by law is complied with, a man can be hanged, under a law which is unjust. My submission is this. We have been framing the Constitution at a time when there was disorder in India. It may be that in view of the exigencies of the situation we here framed the Constitution. I hope and trust that as soon as peace is restored in India, the fundamental rights conferred in article 13 will be without any limitations and that due process of law, which is the only guarantee for individual liberty, as in America and other countries, will be introduced even in this Constitution. If this is not done, if the special powers of the President are not taken away, the result will be chaos and anarchy. Too much centralisation is bound to create conflict between the Centre and the Provinces. Today we do not find that because the same party is ruling in the Centre and in the Provinces. Suppose different parties are elected to the provincial legislatures and if there is a conflict between the Centre and the Provinces, there will be military rule all over, the Constitution will be suspended and India will be a vast prison with the President as the Superintendent of Jails and the Ministers as visitors. Therefore, my submission is that there is very serious objection to these two provisions. In my opinion, the Constitution is neither federal, nor unitary, neither Parliamen-

[Kazi Syed Karimuddin]

tary nor non-parliamentary, that is neither here nor there. With these words, Sir, I give my qualified support to this Constitution.

Shri Arun Chandra Guha (West Bengal: General): Mr. President, Sir, this is a glorious day for the people of India. After centuries of slavery, indigenous and foreign, the people of India for the first time have got the power to frame a Constitution for free India. I say, the people of India, because it is not within living memory of history that the people of India had any say in the framing of the Constitution of the Government they would be living under.

This Constituent Assembly is the child of a revolution. We are passing through the revolution and the Constitution that we are going to frame or that we have framed here must be suited to revolutionary conditions. If the present Constitution that we have framed here takes the social forces for granted as in a stabilised society and if we have framed a constitution only to suit such a society, then, I am afraid, this Constitution will not serve the purposes of the people.

Through years of struggle, we have roused forces among the people, we have roused aspirations in the minds of the people and we must take cognisance of those forces and those aspirations, so that those aspirations may be reflected in this Constitution. Otherwise, Sir, this Constitution will have little utility for the people and I am afraid it will have little stability also. But, at the same time, I know that just after the transference of power, all sorts of fissiparous tendencies in society get an impetus to raise their heads. Just as after the Russian revolution in 1917, about a score of political parties and groups big and small were all aspiring to seize power, here also regional, political and economic parties, classes and groups have similar aspirations. That reality of course, we should take into consideration in framing the Constitution. Moreover, we have started with a legacy. Unlike other revolutions, we have not been able to begin on a clean slate. We have inherited a machinery and a social order which hangs rather heavy on us, and that also has to be recognised and has to be considered. So, the present Constitution by the very nature of things must be something like a stop-gap arrangement and something like a hybrid product.

It has been said, and I think it has been rightly said, that this Constitution has no character of its own. The Russian Constitution clearly stipulates that socialism forms the economic backbone of the State that it has set up and the Soviet in every stratum forms the repository of all social authority. Here, in our constitution, we have not mentioned anything like that and I think, in that respect, we have failed to reflect the aspirations of the masses and to reflect the ideology of the revolution which we have been conducting and of which this Constituent Assembly is the product. Decentralised economy based on village panchayats should have been distinctly mentioned as the fundamental principle and basis of the new state.

Yet, Sir, this Constitution has embodied some very significant achievements of the National Government during the last two years. First I should mention the abolition of untouchability. Untouchability was the greatest blot, the greatest slur on the Indian civilisation and culture. That has been made a thing of the past at least according to the statute of this Constitution. Then, I should mention that the communal electorates and all sorts of separatism have been abolished. That was a thing which was created by the British Government to divide the nation into so many segments psychological and regional. That has also been abolished. I must thank here the Members who represent those Communities

which have so long been known a minorities that they have rightly responded to the needs of the times and I thank them for coming up to the occasion. In that connection, I should also particularly mention the names of Sardar Patel and Dr. H. C. Mookerjee. But for the determined efforts of these two gentlemen, I think it would have been difficult to achieve this.

The third achievement of significance is the abolition of the States. Six hundred and odd States were something like plague spots on the body politic of India. They also have been liquidated, mainly due to the vigour and energy of Sardar Patel.

The fourth significant point is the secular character of this Constitution. When communal passion was raging throughout the whole country, the framers of this Constitution refused to yield to the passion of the moment and they insisted that the State that they are going to set up must be secular and democratic—based on adult franchise. Every citizen irrespective of religion should have the same opportunities and the same rights. That is an achievement particularly significant in the present set-up of the country as we used to know it before 1947 and it should be particularly commended.

Geographical and economic forces have a natural tendency to find their equilibrium in State and in society. I am afraid this Constitution has not reflected that equilibrium but I know that federal constitutions all over the world have got the bias and leaning to expand the area they cover. That has been the case in America, with the U.S.S.R. and also with Australia. Only recently an eminent British liberal statesman Lord Samuel has expressed such a hope—that India will be the Centre of a bigger federation or confederation which will cover far wider areas. There are the economic and geographical forces that would tend to make the bigger area covered within this one State.

In spite of all that may be said against this Constitution, Fundamental Rights, Directive Principles and the Preamble, these three have embodied very noble sentiments and ideas; and the right to work, right to education, and the right to minimum living wages—all these have been embodied in the Constitution. Freedom of speech and association has also been conceded. I know these rights have been hedged in with some overriding clauses; but as I have stated before, just after the transference of power, I think some such restrictions are to be imposed. Until the society has been stabilised, until the Government can feel sure of its position, some such restrictions ought to be imposed. John Stuart Mill who is the apostle of individual liberty and freedom has also admitted the necessity of individual freedom being restricted by social obligations to other citizens and to the State. Such obligations and such restrictions must have been incorporated in every Constitution—in the form of restrictions to individual liberty and to suit the realities of the situation.

India is a big country with many federating units and it is not impossible that some political party or some other mischievous group may seize power in any of the federating units either through ballot-box or through some political strategy and subterfuge. In such a case the State should have authority to control that unit so that—that political party or group may not use the federating unit, which they have taken possession of, as a jumping-off ground for future expansion. So far all these reasons, I do not mind that the Centre has been given some overriding power over the federating units. Yet I feel the power vested in the hands of the President is too much. It has a dangerous potentiality; it smacks something like the power of the German President which helped the rise of Hitler in 1933.

[Shri Arun Chandra Guha]

This Constitution is something like a hybrid Constitution. It is a Federal Constitution but it has started from the top, not from the bottom, as all Federations should start. It is the Centre that is delegating some of its powers to the federating units—not that the federating units who are enjoying sovereign powers are surrendering some of their sovereign powers to the Centre as was the case in the U.S.A. So naturally the Centre which is devolving some powers must be stingy in this revolution of power. And in the present context it is in the fitness of things that the federating units have not their full privileges that in a Federation they ought to have. Yet the financial provisions might have been a bit more liberal so that each federating unit may have opportunity to develop according to themselves without always looking to the Centre for any paltry sum.

This Constitution is a product of a revolutionary movement and it must reflect the aspirations of the revolutionary masses. We have been conducting a revolution and we are in the midst of it and we have not come to the end of our journey. But during the course of our struggle we have been given some revolutionary and economic ideas which, I am afraid, have not been correctly represented, except two niggardly concessions to the ideology of Gandhiji in articles 40 and 43, *i.e.*, regarding village Panchayats and cottage industries. Even retaining the authority for the Centre, even retaining some provisions for stabilizing the society, this is a thing which could have been conceded and provided for in this Constitution. So this Constitution can not satisfy the needs of the revolution. But I do not feel frustrated. I know history is a developing process. No country has its constitution stabilized through one Constitution only. The U.S.S.R. has got it through four Constitutions, first in 1918, then in 1923, then in 1936 and then in 1944. The U.S.A. has got several amendments to its Constitution and I think this Constitution of ours is only a stop-gap arrangement. We have to proceed further so that the revolutionary aspirations of the masses may be correctly represented in the Constitution that will be framed. There is a warning from China; that should be taken note of. It is not enough that the Congress has achieved the independence. The masses should and will look towards the future. If we cannot build up a state taking the potentiality of the future into consideration, I am afraid the Congress Party may have the same fate as the Kuomintang in China and I hope the leaders of the Party will take note of it and will frame the future Constitution with a correct perspective so that the aspirations of the masses may be correctly reflected. Another point in this Constitution on which I have been repeatedly asked by many friends to speak, that is, on the power to detain without trial. Sir, I have passed about a quarter of a century in detention without trial and I know the stings of it, particularly what it means to the relatives of the prisoner. But as I have stated, in this period, just after the transference of power, the Government ought to have such provision; and I say this in spite of the fact that I know the sting and I have suffered it to the fullest.

At the Jaipur Congress, a resolution was passed which stated that the liberty which has been achieved, the freedom attained in the political field, should be extended to the social and economic spheres also. I, however, think that this Constitution will not be of any help to the extension of liberty in the social and economic fields. That is the ideal which Gandhiji gave us, and that is the ideal for which we have been struggling, and that is the ideal which I hope, the nation has not forgotten. I do not feel frustrated or dejected that this Constitution has not come up to our expectation. We shall have to rise to the occasion and

follow the lead which Gandhiji has given us. A mad fanatic has killed his frail physical frame, but his spirit is still pervading, and in the words of the poet Tagore, I would say, that old man whom we have rejected in our pettiness, and whom we have killed in our anger, will in the future, guide us and lead us to the birth of the new world and the new man.

“Vandemataram.”

Shri Shankarrao Deo (Bombay: General): Mr. President, Sir, after more than two years of patient work, we are in the stage of finalising the Constitution of a democratic Republic, for a nation which is 350 million strong. In spite of the partition, the Bharat of today, thanks to those who have worked for that consummation, is bigger than ever before. It is said that we are approaching the end of our task. But there is nothing like an end in human history. An organic thing has to grow, or disintegrate. It cannot remain what it is, a static thing. This nation which has attained its freedom after centuries, has to grow according to its genius; and if this Constitution is to help in its growth, then this Constitution must also grow, which means that it must have in it seeds of growth. After centuries of imperial domination, when a country of this dimension, a nation so numerous and so varied in its culture, seeks to build an instrument of its governance, it is indeed a grand endeavour—an endeavour which requires the most intense sympathy, to reflect the aspirations of the people and the boldest imagination to interpret the current of history.

As constitutions are made, they also grow. The makers of the constitution, therefore, must have a complete knowledge of the constitutional theories and practice of different ages and climes. If we look at this grand documents, which in a few days time will be the Constitution of the Democratic Republic of India, it embodies the philosophy of the exponents of the revolutions which have gone before. If we look at its size, perhaps it is the bulkiest volume, and no other Constitution can stand comparison to it. But that in itself may prove to a shortcoming or a drawback. It seems as if we have not left anything to the future; we have tried to create a straight jacket in which this nation must grow. Many things ought to have been left to conventions, to future events, aspirations and growth. A Constitution which is so big, is bound to lack in elasticity, and therefore, there is a possibility—a fear of its proving an impediment to the growth of the people. Still we must admit that it embodies the philosophy of the exponents of the revolutions which have gone before. It is strengthened by the political institutions which man in his experiment in democracy has so far evolved. The Preambles of the Constitution recognises the sovereignty of the people and is in complete accord with the philosophy of Rausseau’s Social Contract. It is consistent with the theory of Separation of Powers of Montesquieu. Its secular character is in conformity with the spirit of the Renaissance. It has taken the federal institution, first adumbrated as a measure for practical politics at the time of the American Independence. The distribution of powers in the Indian Federations has been fashioned after the Weimar Constitution of Germany in 1918. The Chief Executive of the Indian Republic is neither fully American nor completely French. He will not govern as much as the American President, nor will be be like the French President, an automatic machine for collection of autographs of responsible Ministers. And yet, as under the Weimar Constitution of Germany, he has the potentiality of being a virtual dictator. Our long association with the Commonwealth has imported the cabinet form of government, along with the presidential type. Part III of the Constitution—the Fundamental Rights, and Part IV—the Directive Principles of the State—put forward in unmistakable terms the awareness of the makers of the Constitution of the

[Shri Shankarrao Deo]

principle of Rule of Law which is the bulwark of British liberty, as well as the impact of the Marxist philosophy on the life and society of man. Indeed the Constitution embodies eclecticism *par excellence*.

While appointing the draftsmen of our constitution, we were eager to have the knowledge of the constitutional pandits, and the precision of the constitutional lawyers and we have got them in full measure. Dr. Ambedkar and his associates or his colleagues of the Drafting Committee deserve our gratitude, and I think they could stand comparison to any of the constitution makers and draftsmen of any constitution in any country in the world. But we did not choose to have the wisdom of the statesmen whose main asset is mother wit and commonsense, nor did we choose to fashion our Constitution in the spirit of our Revolution, because none of the makers of this present Constitution can claim to have passed the test of the revolutionary struggle which preceded the year 1946 when the Constituent Assembly met. In fact, the Constitution can hardly be called the “child” of the Indian Revolution. Look at the Constitutions of the world which are the products of revolutions. They have a stamp of their own, by which even a man who runs can read them as the British, the American or the Russian. The Constitution which would rule the Indian people has got every institution which guarantees liberty to man, every principle which promotes progress peace and fraternity, but at the same time we must admit that the Constitution has not made provision for adequate and effective machinery for the implementation of any definite principle of progress inspiring our Revolution. But I know this is no fault of any single individual. Though we say that we have made a Revolution and we have come to power on the crest of a non-violent Revolution led by Mahatma Gandhi, still we must admit that the principles on which that Revolution was based have not gone deep into the body politic or in the Indian society. We followed Mahatma Gandhi. We did what he asked us to do, because he promised us that he would give us independence. But we must admit that, though we followed him, we did not accept his entire conception of life. It was a political Revolution which has give us power—political—which we have tried to embody in this Constitution. But as far as social or economic conceptions of Mahatma Gandhi’s ideology of life are concerned, we must admit that we have to travel for before we can say that we are anything near to them. How often has our Prime Minister, in his American tour, emphasized that the world is looking to India with an expectant eye, and that expectancy is for finding a way out of the present crisis that the world is facing. We must regretfully admit that there is very little in our Constitution which they can feel as something new, which if they copy will enable them to tide over the present crisis. We have drawn very liberally from the Constitutions of different countries like America, England, Australia, Canada, Ireland, Germany and so on. But there is very little that is in our Constitution which they can, in their turn, accept. Mr. President, Sir, it has been a one-way traffic practically. I am afraid, but as I said, it is no fault of any individual. If it is a fault, it is the fault of us all, because we have not faithfully followed our Master. I would not say that we have consciously tried to betray or deceive him. it was our shortcoming, it was our weakness that has disabled us from accepting what he gave us as the philosophy of a non-violent, peaceful life.

Still, there are many things in our Constitution of which we and future generations can legitimately be proud. The first thing which attracts the eye is the unity of this nation as it has been embodied in the present Constitution. We have once for all done away with that poisonous creed which destroyed our unity—Political, social, cultural and moral—namely separate electorates and reservation of seats for minorities. I know that our friends, the Scheduled

Castes, have insisted on having at least some kind of reservation. We have allowed it to continue for ten years. But if we all work and try to remove this blot of untouchability, not from the Constitution but from our hearts, if we destroy it not in law but in spirit, then I am sure this last blot or the sign of it will also go. This unity has also another feature.

We are proud, especially, those who had the privilege to serve the Congress, that while passing this Constitution of Free India, we have fulfilled our pledges to our fellow brothers in the so-called Indian States. In our Haripura Congress we promised that the freedom or independence for which the Congress was struggling was also for the independence of the States. Today we can say that the Indian States are free and independent to the extent or to the measure the so-called provinces in the Indian Union are. In that way, I can say without any fear of contradiction that India was never so united or so great as she is today.

Also there is another feature. Our Constitution, we can assert, has given political freedom and democracy in full measure, because it is based on the principle of adult franchise. I know that there are people who fear the consequences of this privilege or right given to the masses. But I am sure this fear is due to the lack of faith in the people. If we have imbibed the teachings of Mahatma Gandhi, then we can go ahead with full faith in our people, and if today there is any guarantee against the fissiparous or disruptive forces and tendencies in this country, then in my humble opinion, it is this principle of adult franchise. This guarantees us, as far as it is possible for a Constitution to guarantee, that the progress of this country will be on peaceful and democratic lines.

But as I have said before, we must admit that as far as our own Revolution is concerned, there is very little which is reflected in this Constitution.

We have often repeated that the building of a non-violent, decentralised society is the solution of the present crisis—social as well as moral—which the world is facing today.

I know that in this Constitution there is a definite bias towards centralisation of power. But today this a world tendency' Because we are planning the economic order keeping the possibility of war in view. And to win the war you cannot but centralise power and production. The command order must go from one centralised authority. Unless we decide to build society on nonviolent principles you can neither and exploitation nor outlaw war. I would like to remind my honourable Friends who find fault with the Constitution and who want decentralisation of power and production, they must be prepared for a non-violent society. It is a question of fundamentals. It is a fundamental issue which you and the rest of the world has to solve. But we must regretfully admit that as far as we are concerned we are not in a position today to hold up the pattern of Constitution which can give us and the rest of the world a nonviolent social order. Except section 44 on Gram Panchayat which runs four lines in this document of 395 articles and 8 schedules and a bare mention of cottage industries, there is no room for the Gandhian way under which the pyramid-like constitutional frame-work would be broad—based on the million panchayats vital with the initiative and creative energy of the common man. Sir Charles Metcalfe in Ms memorandum before the Select Committee of the House of Commons in 1832 has well brought out how these panchayats kept the even tenor of our life and culture when dynasties toppled down like ninepins and revolutions succeeded revolutions. In the centralised society of today one bomb on the power plant is enough to extinguish all light and there is no single lamp left to light up darkness. But where many lamps burn with little oil in the tiny mud pots, there may not be the flood light that dazzles but there will never be darkness.

[Shri Shankarrao Deo]

I am afraid in this highly centralised Constitution of the Indian Republic there is possibility of there being apoplexy of the heart and paralysis on the ends.

And it is no wonder, because what happened on August 15, 1947 was a mere transfer of power. The British quitted but physically; they left behind many things that they had created during their long rule. As the Constitution is the mirror of society and as the society is practically the same, the Constitution naturally reflects the *status quo*. People expect, alas perhaps wrongly, what they do not deserve. They expect that the constitution which has been made by the apostles of the great Martyr will breathe his breath. But should we not be rational and must not be moved by sentiment. Reason demands that we must be realistic. There is no scope in this world of stern reality for building a Utopia. Reality demands that the society, before being recast must be stabilised. But how often have the exponents of real politic and state craft been enmeshed in their own nets? How often has the reality been a mere passing phase? We must stabilise but at the same time should we forget that what we stabilise today will grow like a Leviathan and cast its shadow. In the progress of history and the affairs of man, there is no resting place. It has never happened in the history of man that he has built in a hurry and changed in leisure without demolishing what he has built. If we build today on the foundation of this Constitution of centralization *par excellence* we cannot any day reorient our life and society. It is true that in the context of today we cannot have a constitution under which the Government will govern the least. There is bound to be a progressive realisation of the ideal, but, as I have stated earlier, constitutions are not only made but they also grow. I may say in conclusion that this Constitution gives us sufficient scope, if we remain true to our aspirations and to our ideals, to slowly bring about a social change, a vital and fundamental change without any violent change in the Constitution. This will enable us to realise our ideal, which is a non-violent and non-exploiting society where all men will be equal and will have equal opportunity for their self-development. Then only will we be in a position to show the third alternative to the world.

Syed Muhammad Sa'adulla (Assam: Muslim): Sir, It is said that sometimes silence is golden while speech is silvern. In my humble opinion this should have been one of those occasions when silence would have befitted this August Assembly. We have already passed all the amendments to the Draft Constitution in the second reading. Any criticism of the provisions thereof in the third reading is in the nature of a *post-mortem* examination. But when I heard from you, Sir, that as many as 125 Members of this august House, that is more than 40 per cent. of its total strength, desired to speak on this occasion I had to revise my opinion and I thought that this large number must have seen the utility of these discussions, the necessity of criticism being recorded for future guidance. Hence My stand before you today. Moreover there is a Persian saying:

"Marg-e-ambuh jashane darad".

which means even death *en masse* is a festivity in itself. Therefore I have joined this death squad.

I cannot stand here today without showing my dual personality, that is being a Member of this august Assembly as well as being a member of the Drafting Committee. To all those friends who have been kind enough to appreciate the hard and dreary labour that members of the Drafting Committee

had to undertake throughout the last two years both on behalf of myself as well as on behalf of my colleagues of the Drafting Committee I bow my head in grateful thanks. I am not unmindful of conveying our thanks even to those critics who in their superior wisdom had thought fit to criticise the shortcomings of the members of the Drafting Committee. But I am constrained to say that they have looked into this matter from a perspective that is faulty, from an outlook that is wrong and from a focus that is out of alignment.

Sir, the Drafting Committee was not a, free agency. They were handicapped by various methods and circumstances from the very start. We were only asked to dress the baby and the baby was nothing but the Objectives Resolution which this Constituent Assembly passed. We were told that the Constitution must conform and remain within the four corners of that Objectives Resolution. Moreover, Sir, whatever we did had to be considered and accepted by this House. How dare any member of the Drafting Committee be so arrogant as to thrust the opinion of seven members against a total number of 308 in this House, ?

Sir, it is an acknowledged principle of psychology that man is a creature of environments. The Draft Constitution which the members of the Drafting Committee were privileged to place before this House could not evade this universal principle. They had to take the environment and the circumstances prevailing in the country into consideration and many of the provisions which jar against the sense of democracy, even of the members of the Drafting Committee, had to be embodied here on account of forces which were superior to that of the Drafting Committee.

Sir, I remember that many sections of our Draft Constitution had to be recast as many as seven times. A draft section is prepared according to the best in each of the members of the Drafting Committee. It is scrutinised by the particular Ministerial department of Government. They criticise it and a fresh draft is made to meet their criticism or requirements. Then it is considered by the biggest bloc, the majority party in the House-I refer to the Congress Parliamentary Party, who alone can give the imprimatur of adoption in the House : and sometimes we found that they made their own recommendations which had to be put into the proper legal and constitutional shape by the members of the Drafting Committee.

Sir, no human-made constitution or document is perfect and it is a trite saying that the actual always falls short of the ideal. Even though I am a member of the Drafting Committee, I have very great objection to many of the principles that have been embodied in this Constitution. It does not lie in my mouth to criticise individual provisions of the Draft Constitution, as I am as much responsible as any other member of the Drafting Committee for the incorporation in our Constitution, but yet I am sorely tempted to draw your attention to only two or three things in this Constitution which are entirely repugnant to a free democratic constitution.

First, Sir, the over-centralization in the Centre and the emergency powers given to the President secondly, the limitations on the provisions of civil liberties and the hemming in of our Fundamental Rights by very many objectionable features : thirdly, the want of any provision of financial help to the provinces, although in the previous regime we were apt to say that the then British masters of ours were not administering the country, but they were simply exploiting it. I often heard that the then Government was not doing any shasan but they were doing shasan. But the limitation of our Fundamental Rights was argued by the superior authorities as essentially necessary on account of the forces of disturbance and destruction that is now raging in the country. They said that the liberty of the individual must be subordinated to the liberty of the country. It is quite true, Sir that at no time liberty

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can be allowed to degenerate into licentiousness, and the forces of freedom must be superior to the forces of the transgressors of peace and security. Therefore, though it went against the grain of free democracy, the Drafting Committee had to put in all those limitations to the Fundamental Rights.

As regards over-centralisation, I need only point out to the emergency powers in Part 18 : article 352 refers to the proclamation of an emergency by the President of the Union. Well this proclamation can be had, according to article 356, for failure of the constitutional machinery in a Province : according to article 360 for financial instability, and according to article, 365 for failure to comply with directions issued by the Union. It was very well said by my Friend, Kazi Karimuddin this morning that this will lead to a conflict oftentimes between the Centre and the Provinces, and instead 'of breathing an atmosphere of independence, freedom and liberty, we will be subject to the utmost interference from the Centre and the President which is bound to go against the very peace, tranquillity and contentment of the people.

Sir, the absence of any provision for financial help to the poorer and needy provinces brings me to the question of the province from which I come, namely Assam. Honourable friends will remember that early this year, I had taken seventy minutes of your time to explain to you the position of financial collapse to which the province has been subjected to unless timely aid comes from the Centre she cannot exist as a unit of the federation. Assam's position is that of a sentinel on the east and north-east boundaries of the vast continent of India where dark and menacing clouds of communism are rising and collecting to the panic and chagring of all the civilised world. It is very well said that the strength of a unit is the measure of the strength of the federation and, no doubt we have tried to make the Centre strong in the draft of the Federal Constitution for India, Just as the strength of a chain ties in the strength of its weakest link, Assam must be kept up to the standard of a civilized Government; her people must be kept happy and contented as otherwise there is a fear of Assam becoming the favourite hunting-ground of Communism.

I had pointed out both in the local Legislature as well as on the floor of this House that deficit to the tune of 2½ crores out of a total income of 5½ crores is no matter of unconcern. The Ministry of Assam was strenuous in opposing my notions and deduction from their own budget estimates. But I am glad that I was corroborated day before yesterday by one of the Ministers of the Assam Government, I mean the Rev. Nichols-Roy who said that the deficit in the current year will come to about two crores. On an earlier occasion, even the Premier of Assam had to warn the House that within two or three years the deficit of Assam will go up to 3 or four crores. Sir, I honestly beseech this House and through this House the authorities at the Centre to look to this woeful state of affairs in Assam and come to its aid liberally and timely. They need not give any thing from their own coffers-, for, as I have pointed out earlier, two or three months ago, that as much as ten crores of rupees are being derived in various shapes from Assam as revenues of the Central Government. So, If one-fourth or one-third of this sum is given to Assam, it would not be a gift or any special concession, but only rendering unto Caesar what belongs to Caesar.

Sir, within the province of Assam, there is the District of Khasi and Jaintia Hills. The capital of Assam is located there. Most honourable Members will be surprised to know that the border of Pakistan is only 50 miles from the town of Shillong. The people on the southern slope of the Khasi Hills used to get their foodgrains and means of livelihood from the district of Sylhet which now forms part of eastern Pakistan. On account of customs barriers between India and Pakistan, the free flow of trade has ceased and no wonder my Friend Rev. Nichols-Roy was accusing Pakistan for this state of affairs. But Sir, my

idea is simply to point out to you that unless foodgrains can be made available in sufficient quantities in that area, as also in other areas of the District those people may ultimately look up to Pakistan as their saviours. But the pity of Assam is that in spite of the fact that it is a surplus province so far as foodgrains are concerned, and though during the three years of my tenure as Prime Minister from 1943—46 Assam could declare a surplus of two hundred thousand tons of rice and had actually supplied to the Central Government that surplus as will be borne out by the records in New Delhi, we supplied on an average fifty lakhs maunds of rice, annually. Assam has become a deficit area and you will be surprised to hear that in the town of Shillong where rice is rationed my own household, the household of an ex-Premier and leader of the Opposition and a man who has been there from 1924, had to go without rice for three days recently.

Sir, the Khasi Hills have been relegated to the Sixth Schedule for which Rev. Nichols-Roy is very thankful, but there is a constitutional anomaly. Although the Constituent Assembly is not to find a remedy for that, yet I must sound a note of warning that this small district of Khasi hills embraced 25 Native States most of which had treaty rights with the Suzerain power in Delhi. They were asked to join the Indian Dominion in 1947. Instruments of Accession accompanied by an agreement were executed by these Chiefs and they were accepted by the Central Government. But, though even this area has been included in the Sixth Schedule, up till now no agreement or settlement has been arrived at between the Constituent Assembly of the Federation of the Khasi States and the Assam Government or the Government of India. I do not know what will happen to these areas or people after 26th January 1950. A deputation headed by the President of the Federation of Khasi States came early this month to Delhi to press their grievances before the States Ministry as well as the Drafting Committee. The Drafting Committee met them and they had two simple requests to make. They are the most democratic of all democratic people. Their native chiefs are elected by all the people in their territory by adult franchise. The chiefs could be removed as well by the people. They want that that system should continue. The second thing which is in the heart of all people in that part of the world is that these chiefs are only territorial chiefs. They have no right over the land. The land belongs to the people. This ancient sacred right of ownership of land in the territories of their chiefs they want to preserve, but they are afraid that section 3 of the Sixth Schedule gives a loophole for doing away with that right. They want a simple provision that these two rights may not be disturbed by the District Autonomous Councils.

Some may say that the District Autonomous Councils will consist of their own representatives, but membership is limited to twenty-four and three-fourths of it only is to be elected, and the rest one-fourth has been left in the air. I do not know whether these seats will be filled up and by what process, whether by nomination and if by nomination by whom, or by any other form of indirect election. I know that these Khasi people are late in the day and nothing can be done at the third reading but I request those honourable Members who will continue to be Members of the Constituent Assembly even after the 26th January 1950 to see that this wrong of the Khasi people is righted in no time, for the contentment and peace of this area will greatly conduce to the safety and preservation of the boundaries of the Indian Dominion.

Sir, after two centuries of subjugation and humiliation, we have drafted our own Constitution. The very idea of it is thrilling to my mind; that very thought sends our hearts bumping and racing, but yet we cannot say with our hands on our hearts that we feel jubilation and joy over the present Draft Constitution to that extent. This Constitution which will be passed and come into law with in a couple of months is a compromise Constitution. Many honourable Members have said that this is but a transitory Constitution. I do hope, Sir,

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that future legislators will try to make it as perfect as possible. The test of the pudding is in the eating. Similarly nobody can say that this Constitution is to be commended or condemned. The working of the Constitution alone will show whether it is a workable Constitution of whether it is unsuited to the necessities of the times and the requirements of our people or to the genius of our nation, but if we work it in the spirit of the Preamble, we must say that we have a Constitution which can be made an ideal Constitution by working it in the proper spirit.

In the end, Sir, I would like to invoke the blessings of the Maker of the Universe and I will recite only two invocations in Sanskrit.

asato ma sadgamaya

tamaso ma Jyotirgamaya

In the Arabic we have a saying

As sayyo minni, al itmaneo minul Aliah

The endeavour is man's, but the ultimate result is in the hands of God or Alah. Let us all in all humility try to work this Constitution which has been drafted by people who gave their best to it, and if we work it in the spirit of the Preamble, *i.e.*, try to do justice to all, and try to work it in the spirit of equality and fraternity, we can turn even this dreary Constitution into a garden of paradise.

Shri H. J. Khandekar (C. P. & Berar : General) : Mr. President, Sir. I stand here to support the motion moved by my Friend Honourable Dr. Ambedkar. Before saying anything about the Constitution, Sir, I would like to congratulate you first for the able work that you have done in this Assembly for the last three years, and while doing that, Sir, you never made any differences, and any discrimination between Members and Members and you were so liberal in giving chances to every member to participate in the debate and the most important thing that you have done as the President of this House is the best rulings that you have given on the points of order raised in this House.

Secondly, I congratulate the Drafting Committee for the work that it has done to frame this Constitution. Sir, I also congratulate my Friend, Pandit H. V. Kamath, a devotee of G. G. for taking keen interest in the work of this Constitution-making. I am very much proud of him as he comes from my own province of C. P. Sir, I would call him a Pandit, because he is a Pandit in this way—

Matrivatparadareshu Paradravyeshu Loshtawat, Aatmawat Sarva

Bhuteshu yah Pashyati sah-panditah.

Pandit Kamath is a man of these qualities as long as he is a bachelor. I cannot say whether there will be any change in him if he gets married.

Sir, no section of the Indian people will welcome this Constitution more enthusiastically than the members of the Scheduled Castes of this country for the reason that this Constitution has made a provision for the abolition of untouchability and thereby enabled the Harijans to live like human beings in the country. Sir, I being a member of the Scheduled Castes welcome this Constitution whole heartedly. Sir, you also know that untouchability is a curse on the Hindu society, and seven crores of the people of this country have been treated or are being treated like dogs and cats by their caste Hindu brethren. They have been segregated for the last so many centuries. When the agitation for India's independence intensified, leaders like Pandit Motilal Nehru, Lala Lajpat Rai, Lokmanya Tilak, Sardar Vallabhbhai, Patel, Pandit Jawaharlal Nehru, Babu Subhas

Chandra Bose, Mahatma Gandhi, Babu Rajendra Prasad, Rajaji and others found that there can be no freedom for India without removing untouchability from the Hindu society. When India became formally independent on the 15th August 1947, I remember, Sir, that Sardar Vallabhbhai Patel who in my judgment is the greatest custodian of that independence who deserves the unstinted gratitude of this House and of the country for the most magnificent work he did in bringing all the States into the Indian Union, said on some occasion that India's hard-won independence cannot be preserved if untouchability is continued. So also I remember that our veteran Leader Pandit Jawaharlal Nehru, the Prime Minister of India, said on an important occasion that the foreign countries blamed India only because it observes untouchability. Sir, the social workers and the religious workers and even the political workers of this country worked very hard for removing this untouchability but they could not succeed. So also the social and political workers, leaders amongst the Scheduled Castes like Rao Bahadur Srinivasan, Virratna Devidasji Jatas Sant Chockamela, Bhakta Ravi Das, P. N. Bhatkar, Kishan Fagoo Bansode, G. A. Gavai, Mahatma Kalicharan Nandagaoli, Umaji Gujaba Khandekar, Dr. B. R. Ambedkar, Muniswamy Pillay, E. Kannan, B. C. Mandal, Narayan Dhanaji Bhosle, Mrs. Venubai Bhatkar Sambhaji Godghate, R. B. Matte, Antooji Bhagat, Diwan Bhadur M. C. Rajah, my humble self and many others in the country worked hard for years together to get rid of untouchability, but it is not removed. But we could only succeed to the extent to make the Harijans feel that they too are human beings. This country was being governed for ages together by the law of Manu and you know, Sir, what are the effects of this law on this country. Varnas were created, castes within castes were formed and even one caste could not see the face of other caste. The untouchables according to the law of Manu were to go and settle outside a village or a town and that too in the east. Even today, Sir, if you minutely see the situation of villages and towns, the houses of the untouchables will be found in the east. What of that ? We untouchables, at that time called Sudras, were not allowed to name our children according to our wishes. In Manu Smriti there is a sloka: "Mangalam Brahmanasya syat Kshatriasya Balanvitam vaishyasya Dhansaiyukte shudrasya Too jugupsitam." If we Sudras, today's Harijans, were to name our children according to our wishes we were not allowed to name them like Jawaharlal Brahmadata and so on but we could use only names that are jugupsitam which means Nanda Janak and this was the law of Manu. Now today, Sir, we are enacting a law of Independent India under the genius of Dr. Ambedkar, the President of-the Drafting Committee. If I may do so, Sir, I call this Constitution the Mahar law because Dr. Ambedkar is a Mahar and now when we inaugurate this constitution on the 26th of January 1950 we shall have the law of Manu replaced by the law of Mahar and I hope that unlike the law of Manu under which there was never a prosperity in the country the Mahar law will make India virtually a paradise. Well, Sir, even the social, political and religious reformers in the country like Gautama Buddha, Ramanuja, Kabir, Sant Tukaram, Raja Ram Mohan Roy, Swami Dayanand Saraswati, Paramahansa, Mahatma Joti Rao Fulley, Vithal Ramji Shinde, Thakkar Bapa and last but not the least, Mahatma Gandhi, found it very difficult to get rid of this ghost of untouchability. They agitated in the country but they did not succeed. Now, Sir, we have embodied an article No. 17 in this Constitution to remove untouchability and I am sure that untouchability will be removed, but I have seen Act for removing untouchability in the Provinces, the Temple Entry Act and the Removal of disabilities Acts passed by the different Provinces in this country. What is the effect of these laws ? Not an inch of untouchability has been removed by these laws and, therefore, if this law of removing untouchability remains in the book of Constitution, itself, I do not think that untouchability will be removed. If at all the ghost of untouchability or the stigma of untouchability from India should go the minds of these crores and crore of Hindu folks should be changed and unless their hearts are changed, I do not

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hope. Sir, that untouchability will be removed. It is now upto the Hindu society not to observe untouchability in any shape or form. My honourable Friend, Mr. Ranga in his speech the other day said that he is an optimist and he is sure that untouchability and even the name Scheduled Caste will be removed, from India within ten years' time. Well, he may be an optimist. I am not. But I am a practical man. Being an untouchable I know the difficulties of untouchables. I am an untouchable (Interruption); I have got the practical knowledge of untouchability and I can say that it cannot be removed within ten years if the Hindu community is not sincere. It will take, in my opinion, very many years because the hearts of the Hindu society are not changed. I have got so many instances, but I have very little time at my disposal and therefore, I do not want to go into details but I can only say to my honourable Friend, Prof. Ranga that making speeches in the Assembly will not remove untouchability. He should go in the country from corner to corner and preach to the Hindu society and change the minds of that society to his views and then and then only untouchability has a chance to be removed. Mr. Ranga also said in his speech the other day that he is fortunate in having got the Andhra Province but I am unfortunate for not having got the separate province for the Marathi speaking people of Maharashtra.

The other thing, Sir, is the Government of India, the Provincial Governments, the Congress and other political bodies will also have to do their best to remove untouchability. For this untouchability the civilized countries in the world were looking upon India with contempt so far and now, Sir. I would ask those countries to judge us by the Constitution that we are now passing. No wise Harijan or reasonable Harijan would like to be an untouchable or a Scheduled Caste forever. We all wish that we should be merged immediately into the Hindu Society because we also being the children of this country want that India's head should be high in the whole world.

Sir, I now come to the article which deals with the reservation of seats for the Scheduled Castes and Scheduled Tribes. I am glad that seats have been reserved for these two classes in the legislature on their population basis. But, the time limit given is only ten years. There were amendments to this article from the beginning, I mean in the Minorities Committee of the Advisory Committee and even in the Constituent Assembly itself. But, unfortunately, they were not adopted. I think this ten years time' is not sufficient to make the Harijan society to come to the level of the Caste Hindus. I am sure that if a Harijan contests the election after ten years, when there is no reservation of seats with a Hindu, no Caste Hindu will vote for him and it may even lead to forfeiting his deposit. This is the condition in the country. Therefore, ten years' time is not sufficient for the political emancipation of the Scheduled Castes.

The other point is about the claims of the Scheduled Castes and Scheduled Tribes in the services and posts. Sir, a few minutes before, I heard the speech of a friend of mine who belongs to the Sikh community. I was astonished to hear him saying that there are Scheduled Castes in the Sikh community. I remember when Dr. Ambedkar wanted to denounce the Hindu religion. Sikh friends and Sikh leaders came to Dr. Ambedkar and said so many times and on so many occasions even in the public that there was no untouchability in the Sikh community and they invited Dr. Ambedkar and his party to embrace Sikhism. But, today, I hear from this platform a Sikh friend of mine saying that there are untouchables in the Sikh community. On these grounds the

seats of the Scheduled Castes in the East Punjab have been taken by my Sikh friends. If at all they wanted to take their share in the name of untouchability, they ought to have taken it from the general seats. But, these seats have been taken from the equally backward community whom they call Ramdasias in their opinion who are the most backward people of this country. However, I am glad that we people have secured reservation of seats in the Legislatures for our community and from that quota, the Sikh community has taken a share on the pretext that some of them are also untouchables. It is not their ordinary political game. They have got included some Sikh communities in the list of the Scheduled Castes with the object of contesting all the reserved Harijan seats in East Punjab, thus to encroach upon the rights of the real Harijans. About the services and posts, that Sikh friend of mine was grumbling. He wanted the posts and services also as have been given to the Scheduled Castes people among the Sikhs. If I may tell this House, that the Scheduled Castes have been appointed to the services upto now by the Government but not to the extent of the percentage that has been given to us by the Government of India, I mean 12 1/2 per cent. in upper class services and 16 1/2 per cent. in the lower class services. Their percentage has not been fulfilled. Still, I may tell you, Sir, that notices have been given to the persons belonging to the Scheduled Castes by the different departments of the Government of India for retrenchment. Hundreds of Harijan people are going out of their services in this month or the next month. I hope the Home Ministry of the Government of India will exempt the Harijan Government Servants from retrenchment. Here under this article 335 our claims are to be considered for appointment in posts and services while in the Government of India in this month, when we are going to adopt this Constitution, retrenchment of Harijan employees is being made by the different departments. Therefore, I would like to say this clause will not serve the purpose of the Scheduled Castes unless the Government of India and the different provincial Government bring this clause into effect and give them the chance in services and posts according to their percentage. I do not want more; give them the same percentage that comes to them according to their population.

The next thing that I would like to say is about the Federal Public Service Commission and the Provincial Public Service Commissions. In these Commissions, unfortunately, there is no provision in the Constitution for having a Harijan member or a Scheduled Caste member. I can only say that the fate of these communities, I mean the Scheduled Castes and Scheduled Tribes, is now in the hands of these Commissions in which there will be no Harijan members. It is for the Government of India and the Provincial Governments to give instructions to these Commissions to look to the claims of the Scheduled Castes. That much, I can say about these Commissions and their work about these communities.

We have been demanding for the last so many years that there should be reservation for the Scheduled Castes in the Cabinets of the provinces and in the Government of India. These provisions are not found in this Constitution. There is only a convention now. I hope the leader of the party in the Government of India and the leaders of the parties in the different provinces should note this thing and that seats in the Cabinets should be given to the members of the Scheduled Castes more liberally. You will say, there are seats today; but they are not adequate. I would like to say a word or two more. There is not a single Harijan in this country who has been appointed as a Governor or Ambassador or Deputy Minister. Of course, I am saying this for the information of the Government and the Congress High Command and hope that they will consider this question seriously.

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In this Constitution, Sir, powers have been given to the President. I hope the President will make the best use of his powers as regards the Scheduled Castes and Scheduled Tribes. I would like to bring one thing to your kind notice. In this House there are 308 members out of whom there are 73 members from the States. But I am sorry to say that out of these 73 that have come from the States, there is only one Harijan member. I hope, Sir, you as the President of this Constituent Assembly, are going to fill up casual, vacancies within a few months and I hope you will keep this thing in mind and bring more Harijans to this House from the States so also from the provinces. We are only 27 in this House whereas according to our population we ought to be sixty. It is also upto the Congress High Command and to you, Sir, to see that our quota in this House is fulfilled. I also suggest that some Harijan members who are the spokesmen should be allowed to continue in this House (Legislative) and resign their seats in their provincial Legislatures.

We have been given according to this Constitution freedom of speech and freedom of movement and so on. But there is no freedom of movement for one crore of unfortunate people in this country. That is, the Criminal Tribes. Nothing is said about them in this Constitution. Will the Government repeal the Criminal Tribes Act and give every freedom to the Criminal Tribes ?

Shri H. V. Kamath : So called Criminal Tribes!

Shri H. J. Khandekar : Yes, so-called Criminal Tribes. Article 19 deals with protection of certain rights regarding freedom of speech etc. with provisos. I hope this article may not be used as a weapon against the rival political parties and labour leaders. I am glad to see in the Constitution that *begar* and forced labour are abolished and the curse on untouchables from whom the *begar* and forced labour were taken has gone.

I am personally not in favour of Sales Tax because it is an indirect tax on poor masses but the Article on this is adopted in this House. I can only say about this article that it has brought C. P. and Bihar provinces to a loss. I would like to say a word about adult franchise. Adult franchise has been given and I hope now the dream of Kisan and Mazdoor Raj will be fulfilled. Kisans and Mazdoors in the majority will be the voters of this country and they will elect persons of their choice and form their own Government. In the last elections the Congress had in its election manifesto said that it will start Kisan Mazdoor Raj in this country. By incorporating the article of adult franchise the Congress has fulfilled its promise.

I am very glad, Sir, that Hindi has become the national language; but that should not be the Hindi as I read it in today's agenda. I could not understand the word 'Parit' there. If such words are being used in Hindi, that will be a misfortune of the country. Let us have that Hindi which everyman of this country understands. (*Hear, hear*).

The other thing is that there should be a National Anthem. I am very much thankful to this House for adopting the name "Madhya Pradesh" for my province—C.P.&Berar.

Shri R. K. Sidhwa : May I know which word be referred in the agenda ?

Shri H. J. Khandekar : I referred to—‘Parit’ in the Hindi copy of today’s agenda circulated to us by the office of this Assembly. It is this :—इस परिषद् द्वारा निश्चित किए गए रूप में विधान पारित किया जाए। I know Hindi well but I cannot understand what पारित means.

I was talking about ‘Madhya Pradesh’. This amendment was moved by my honourable Friend Mr. H. V. Kamath and myself and it is accepted by this House. I also congratulate the Premier of C.P.—Pandit Ravi Shankar Shukla and his Cabinet for recommending the name ‘Madhya Pradesh’ and this House for adopting the same.

(At this stage Mr. President rang the bell).

Shri H. J. Khandekar : Sir, I have to speak on behalf of a certain community.

Mr. President : There are other speakers also who have spoken and who will speak.

Shri H. J. Khandekar : I will say a word about my Friend Damodar Swarup. He says in his speech that this Constitution will have to be changed or amended if the Socialist Party comes into power. I only draw his attention to articles 37 to 47 and ask him what more he wants according to his socialist programme and views. I know that that is a directive principle. These are obligatory on the Government and I hope the Government will carry them out. I also tell my Friend Seth Damodar Swarup that if at all socialism is wanted by somebody in this country it is the Scheduled Castes and not to the Capitalists, Malgujars Zamindars and Mill-owners. But today I see that the sons of these capitalists are the workers and agitators in the socialist party. I do not know what is the object behind it.

I congratulated Dr. Ambedkar in the beginning of my speech. I and Dr. Ambedkar had differences for the last 18 years on the question of separate electorates *versus* joint electorates. We that were not prepared to see face to face to each other in this period of 18 years but I am glad that he worked very hard and not only worked but given up the idea of separate electorates and he voted for the joint electorates in the meeting of the Advisory Sub-Committee. Therefore, I do not have any fundamental difference with him and for the greatest service that he has done to this country with in the period of these three years in framing this Constitution he deserves congratulation. Now only one suggestion that I have to make to him, *i.e.*, he should now join the Congress and make good to his own people. I hope if he joins the Congress, I am sure, the Scheduled Castes of this country will be more benefited. So also, I would like to make a suggestion to the other friend of mine—Honourable Mr. Jagjivan Ram who is a member of the Congress Working Committee and a Minister in the Government of India. When Dr. Ambedkar was doing the greatest service to this country in these three years, my honourable Friend Shri Jagjivan Ram was doing the greatest harm to the Nation.

Honourable Members : Question.

Shri H. J. Khandekar : That is by splitting up the Scheduled Castes into Chamars and non-Chamars.

Shri Brajeshwar Prasad : (Bihar: General) : We protest against this remark.

Shri H. J. Khandekar : This is only a suggestion. I hope he will not divide the community in this way.

Mr. President : This is not a suggestion, it is an allegation. You had better stop. You have taken more than thirty minutes—Mr. Khandekar.

Shri H. V. Kamath : I would like to know what he meant by 'G. G.'

Shri H. J. Khandekar : 'GG' means the devote of God and Goddess. With these words I commend to the House this Constitution for adoption.

Mr. Mahboob Ali Baig Sahib (Madras : Muslim) : Mr. President, Sir, it is not mere formal or customary expression of appreciation if I express my deep sense of gratitude to you, for the manner in which you conducted the proceedings which left no ground for complaint and if I also congratulate Dr. Ambedkar for the outstanding ability with which he piloted the Draft Constitution. Some of us who did not belong to the dominant party which decided questions outside the House beforehand, either confirming or modifying the views of the Drafting Committee—and as it were, acted as the final arbiter—such of us who did not belong to this party would have been helpless if you had not come to our rescue and allowed us to have our say in the matter, for which fairness on your part. I heartily thank you. Dr. Ambedkar was unique in his clarity of expression and thought, and his mastery over the Constitutional problems including those of finance has been marvelous, unique, singular and complete. But, Sir, unlike you, he was not a free agent. So the evils or the defects in the Constitution as it is placed before us today are inherent in the situation in which he was placed and he cannot therefore be personally responsible for them.

Now, let us examine the causes that led us to shape the Constitution as it is before us. There are three causes according to me. The first is, most of us including those on the Drafting Committee were brought up and nurtured in an atmosphere of British Imperialism and this British Imperialism in its last stages became repressive, especially when the freedom movement began and in the name of safety and stability of the State, deprived the subjects of their civic rights and their personal liberties. Although most of the persons who suffered protested vehemently against this rule of repression when they were called upon to frame their own Constitution after they attained freedom, they could not shake off that frame of mind which was engendered by notions of stability and security of State inculcated by the British Imperialism.

The second reason, Sir, is this, that it is very unfortunate that when this Constitution was before the Drafting Committee, and subsequently before the Congress Members of this Assembly, and also finally before this Assembly itself, conditions in the country were far from peaceful. And the third reason is that one political party became the successor of the British imperialism and has been enjoying power. I am, therefore, led to believe that these three factors were responsible for the fashioning of this Constitution which is before us, and which, according to me, is very, very disappointing, conservative and reactionary. To illustrate my point and to substantiate it, I would invite the attention of this august House through you, Sir, to the contrast between the decisions which this Assembly had taken in the year 1947, and also those that have emerged now after the consideration stage.

Sir, memories of the repression were very green in our minds in the year 1947. The disturbances in the country were not in great evidence at that time, and the political party which is now enjoying power, was not in exclusive authority at that time. Therefore, it was, Sir when the Model Constitution was placed before us, it was the Honourable Sardar Patel, who moved that those provisos curtailing civil liberties should be deleted, and it was he who again moved that as far as personal liberties are concerned, they should be decided by a judicial enquiry. And as far as provinces are concerned, autonomy was contemplated. With power vested in one political party, and the memories of repression fast fading away, and also with disturbances in the country

raising their ugly head, the whole face changed, and changed for the worse. Civil liberties have been curtailed. Personal liberties have been hedged in, and centralisation of power has been increased. It is claimed by some that there is justification for the curtailment of the civil liberties, in view of the conditions prevailing in the country.

I submit, Sir, that we have to consider two points in this connection. The first point is whether we are making this Constitution for all time to come and for normal times, or whether it is for meeting the exigencies of the present day. That is the first question. And the second question is : what are the safeguards which you give to the individual in the Constitution, which is modelled on what is called Parliamentary democracy, that is, government by a political party. These are the two questions to be considered and we must ponder over them. As far as the first question is concerned, my humble submission is there is ample provision in part XVIII which deals with emergency powers, there is also one article—No. 358, I suppose—which gives power to the State to suspend the rights which are given under article 19. What more do you want ? Why are you disfiguring this Constitution by curtailing Fundamental Rights, curtailing civil liberties, in view of the present circumstances ? There is no justification at all for that. You have got the emergency powers. The Centre has got power, the President has got powers, and the State has the power, whenever an emergency is declared, to take away the rights. So my point is that there is no real justification for doing this.

The second point is, what about the safeguards for the citizens in a Constitution which is going to be what is called parliamentary democracy. Two provisions are absolutely necessary in such a Constitution. One is that the Fundamental Rights must be real and these Fundamental Rights must not be subjected to the jurisdiction of the Legislature, which under such a parliamentary democracy, is bound to be a partisan government. So these Fundamental Rights must be taken out of the jurisdiction of the Legislature. That is the first requisite. The second requisite is that these rights must be enforceable at the instance of the aggrieved citizen, by a court of law. These are the two tests of a good Constitution, and let us see whether the Constitution satisfies these two tests. I am afraid, our Constitution falls too short of these two requirements. With all the goodwill of Dr. Ambedkar and also with the commendable championship of friends like Mr. Bhargava and Mr. Jaswant Roy Kapoor and others, they were not able to persuade the House or the Drafting Committee to place these Fundamental Rights out of the reach, out of the jurisdiction of the Legislature which necessarily is bound to be a party legislature. Even today after so much of so-called improvement in article 22, the State Legislature can still detain a man, without trial for three months, and Parliament can detain him for any period it may decide. That is the position as far as the Fundamental Rights are concerned.

Now, it is very unfortunate that throughout in the provisions of this Constitution, there runs some kind of suspicion of or lack of confidence in the judiciary. This is very unfortunately, Sir. In a democracy where parliamentary system of government is contemplated, the most important thing that we to look to is whether the fundamental rights provided for in the Constitution are real and are enunciated and defined, and whether courts are empowered to enforce these Fundamental Rights without jeopardising the safety of the State. That is the only way in which the rights of citizens in a parliamentary democracy can be safeguarded. Otherwise, Sir, I am afraid it will result in—I am afraid to say it—in fascism, autocracy and distatorship.

Centralisation of power in the Centre is another instance of the tendency in the Constitution towards a totalitarian, and unitary form of government. Even the little autonomy which the provinces had before, even that has been taken away, all in the name of emergency. As during the time of the Britisher in the name of stability and the safety of the State, people have been deprived of their liberties,

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in the same way we find in this Constitution so many provisions which in the name of emergency deprived citizens of their liberties and strengthening the Centre, deprive States of their powers.

May I again invite the attention of this House to the first article in the Emergency Chapter 18 ? There you have made provision to meet conditions of war, outside aggression and internal disturbance. The whole Chapter is there. You can utilise it in the case of a real emergency. There is danger if Fundamental rights themselves are curtailed. In the hands of an unscrupulous executive, articles 22 and 19 will be taken advantage of to oppress the persons. That is what this Constitution has laid down. For some reason or another, the persons who were responsible for drafting this Constitution have taken it into their heads to urge their points of view, making emergency more important than normal conditions. It is said that the price of democracy is vigilance. I hope the people will be vigilant enough to change the Constitution, and if necessary, change the Government which would, taking advantage of these provisions of this Constitution, rule in an arbitrary way. I hope India will rise to the level of self-consciousness and enthrone democratic principles and individual rights and instal a Government which will uphold the rights of individuals as well.

Shri S. M. Ghose (West Bengal : General) : Mr. President, Sir, first of all, I express my gratitude to the Arabindo who first gave us the call for the struggle of Indian independence. We are practically at the end of our journey which was commenced by the Indian sepoy in 1857 and subsequently countless martyrs and great leaders have joined in that journey and led us through these difficult periods of our struggle to the fulfilment and realisation of our great dream,—the independence of the Indian people. I will be failing in my duty if I do not mention some of the names of those great leaders, and martyrs—I mean, Tilak, Lajpat Rai, Pandit Moti Lal Nehru, Pandit Madan Mohan Malaviya, Chittaranjan Das, J. M. Sen Gupta, Subhash Charda Bose, Srinivasa Iyengar, Satyamurthi, Dr. Asnari and the martyrs like Kanyalal, Satyen Bose, Jatin Mukerjee, Jatin Das, Surjya Sen and many others who have fallen during the struggle. In the present generation, we have worked under the leadership of Mahatma Gandhi, the Father of the Indian nation, Panditji, Sardarji and yourself, Sir. We express our gratitude to all.

There is a tendency to think that Russia has spoken the last word so far as human progress is concerned, and Russia is the last milestone in the revolutionary struggle of humanity. I would like to say most emphatically that Indian people and India shall have to go much beyond that. I believe the Indian people have got that strength, that courage and that genius to fulfil the great task.

I have heard in this Assembly something about Manu which I consider is not a proper understanding of what Manu stands for or what Manu really means. Speaking about Dr. Ambedkar an honourable Member was pleased to say that he was not a Manu but a Mahar giving us law. But there is no knowing whether Manu belonged to the Brahmin or to the Mahar caste. But Manu represents a conception of Indian people,—an ideal of law given for humanity. In that sense Dr. Ambedkar was rightly called the Manu of the present age. It is not that anybody who is in charge of making law really makes anything, but he simplifies and codifies the law as seen by *rishidrishti*, i.e., seen by intuition. In that sense, whether a man comes from Mahar community or Brahmin community or any other community, if he has that intuition, if he could see and codify things not only for his community, not as his community views things, but for the whole of humanity, he will be rightly called Manu.

Coming to the Constitution I know many of us are not really satisfied with it, for in it India is linked up with the British Commonwealth. At the same time I would like to remind my honourable Friend that it is not so much the constitution but the will of the people which will determine the future destiny of the

country. Whatever there may be in the written Constitution, we have to see whether it will come in the way of our doing anything for the good of the Indian people as we would like to do. In that sense I am confident that there is nothing in the Constitution which will prevent us from doing anything for the good of the Indian people at large. Even if there is anything, I am also confident that much will depend on the conventions which we will create.

Sir, I lay more stress on the provision of panchayats. I am aware that the provision is not the one which we wanted it to be; yet I am confident that if we all put our strength and soul into it and work the constitution which has provided the basis for the panchayats, God-willing we shall succeed.

With these few words I support the motion.

Shri P. T. Chacko (United State of Travancore and Cochin) : Sir, much has already been said about the merits of the Constitution. I must say that I can view this Constitution only from the point of view of a representative of an Indian State. From that point of view I must say that in this Constitution the Centre is remaining supremely predominant just like a mother-in-law, who is jealous, young, widowed, mischievous and also autocratic placing all sorts of restrictions and obstructions in the way or the movements of a young married couple. I am not against having a strong Centre in India. In the background of our history I know that we should have a strong Central Government. At one time every adventurer, who came from any quarter of the globe could easily find a fortune in India. Every reckless raider who came to India easily founded an empire here. Therefore we want a strong Centre. I am also conscious of the tendencies of our people. This is a time when political parties are using violence for the attainment of their aims everywhere, aid at least in some places in India. Even Congress volunteers who have gone at least once to the prison are thinking in terms of becoming a minister. Every Dick Tom, and Harry thinks he can become a minister either in the Centre or in the Provinces. So looking at the tendencies of our people and also at the background of our history I know that we should have a strong Centre. But we should not forget what India is. It is a continent with people differing from one another in language, race, religion and mentality who are often jealous of one another's manners and Customs. There are various cultural, religious, communal, racial and linguistic minorities in India with interests conflicting. This is therefore a clear case for a federation and accordingly we have decided in favour of a federation. But I doubt whether we are having a federation at all in our new Constitution. Though in form it may be said that this is a federation. I am of opinion that in substance it is a unitary constitution. Take for example the legislative powers of the Centre. Specified powers are given to the States and the residuary powers are given to the Centre unlike the Constitution of U.S.A. or the commonwealth of Australia.

Then again looking at the Concurrent List and also the Union List on which the Union can legislate one can see that any subject of any vital importance to the community comes under these Lists. Even in ordinary times the Centre can legislate on any subject of any importance to the community. Again by invoking the special provisions in articles 249, 250, 253 and also 369 the Parliament can legislate on any subject in the national interest, or in an emergency, or to implement certain agreements or on certain subjects temporarily for a period of five years. From this we can see that all power is given to the Parliament at the Centre and practically no power is given to the legislatures in the states. Thus India becomes in substance almost a unitary State.

As regards the executive also extraordinary powers are vested in the Centre. Besides emergency powers, directions under articles 256 and 257 can be given by the Centre to the Constituent States. They have to be obeyed under penalty

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under article 365. It appears to me that these provisions strongly emphasise the unitary character of the Constitution. To enumerate them again :—

1. The residuary powers vest in the Centre; 2. There is no subject on which the Parliament cannot legislate even ordinarily; 3. Special powers to legislate on subjects in the State list; 4. States cannot alter their constitution of their own free will; 5. The law of the Parliament over-rides the law of the States; and 6. Extraordinary executive authority is vested in the Centre.

Now I come to the position of the Indian States in the Constitution. The Indian States are placed under the control of the Centre under article 371 for a period of ten years. Article 371 read with article 365 makes Indian States almost complete vassals. For a moment I am constrained to think of the long struggle for freedom in which the peoples of the Indian States took no little part. There are people in the States who have given up even their lives in the freedom struggle. There are many of us who have made smaller sacrifices also. What is the final out-come of all these struggles ? In the place of the foreign imperialism, we are now having an Indian Imperialism. It is true that Sardar Patel, as if by the wielding of a magic wand, has obliterated even the last vestiges of a certain sort of autocracy in the States. But Sir, now we find that we are placed under the guardianship of the Centre and we are considered almost as minors. I ask, where is the autonomy of which we spoke so much in 1937 ? Where is the autonomy for which we wanted assurances from Governors in 1937 when the Congress was about to accept office ?

It is a well known principle of constitutional law that there should not be any preference for or discrimination against any of the Constituent States. In the Australian Constitution, as regards commerce and trading, section 99 lays down that the Commonwealth shall not by any law or regulation of trade or commerce or revenue give preference to one State or parts thereof, over another State or any parts thereof. And again in the Constitution of the Commonwealth of Australia section 51(2) prohibits any discriminatory treatment in the matter of taxation. In the United States, equality of constitutional right and power is a condition of the States of the Union. Even in cases where new States were admitted into the Union, it was held by the Supreme Court of the United States that no conditions creating inequality can be imposed by the Congress. Coyle-vs-Smith is a case to this point, wherein the Supreme Court held that even a condition agreed to by a State, at the time of its incorporation, becomes void, if the condition prevents the State from being an equal with other States. All constituent States in the Union are equal in power and in rights. In our Constitution we see that there is a discrimination made between States who were once known as Indian States because of mere historical accidents, and the States which are known as the Provinces. Why, Sir, for a period of ten years should these States, which were known as Indian States, be under the complete control and management of the Centre ? Is it the case that the Provinces are more progressive than the Indian States in India ? I cannot agree to it. As all the speakers at the time of the discussion on article 371, said, many of the States are more advanced than Provinces. Therefore, I do not think there is a case that has been made out for including this article 371 and also article 365 in the Constitution as regards the Indian States. These provisions give a preferential treatment to the provinces as compared with the States.

Shri R. K. Sidhwa : It is not applicable to the progressive States.

Shri P. T. Chacko : Yes, Sir. It is said it will not be applicable. I cannot understand the meaning of that. Once it is laid down in the Constitution that

for some time the States should be under the control of the Centre, there is no meaning in saying something against it. Of course I attach great weight to the assurance given by Sardarji. But I am now discussing the constitutional provisions. It would have been so easy for this Assembly to decide to exempt the States which are progressive in the Constitution itself.

Shri Mohan Lal Gautam (United Provinces : General) : There is a proviso that the President can exempt.

Shri P. T. Chacko : Of course there is a proviso. It may do good in future. But this Assembly could have exempted the States in the Constitution itself, which we have not done. Therefore as regards States, I must say that in the Constitution preference is given and discrimination is made between the States and the Provinces.

Shri Mohan Lal Gautam : The proviso is in the Constitution.

Shri P. T. Chacko : It is for the future, Sir. But we could have provided otherwise. It would have been so easy. We will see from the Constitution that in some cases we have provided for exemption for certain purposes and for certain States. We could have done so, in the Constitution itself. When we apply article 365 and article 371, I would like to ask one question about the position of the Legislatures in the States. It is a well known maxim of constitutional law that a power conferred upon Legislature shall not be delegated to any other authority. (Panama refining Co-*vs*-Ryan). It is also another well accepted principle that a delegated authority cannot delegate its own authority to another body or person. In the case of 'the United States of America, after the Constitution was drafted, it was sent to all the States for their ratification. In Australia also they did the same thing. Even in South Africa the colonies had to ratify the Constitution before it was finally passed in the Parliament. So also we sent the Draft Constitution to the Indian States, to be ratified by the States Legislatures. We have three States which have Legislatures—Travancore-Cochin, Madhya Bharat and Mysore. The Draft Constitution was sent to these States for ratification. All these States unanimously recommended certain amendments but none of those amendments were even considered in this Constituent Assembly at the time of the consideration of the Constitution. Therefore I ask : Was ratification necessary? In America they believe that the power of the Legislature cannot be delegated to another body and the delegated authority cannot delegate its own authority to another body. So they got ratification by the Constituent States. If the States legislatures could not delegate their power to their representatives here, it was necessary that the Constitution should be ratified by the States Legislatures. If that be the case, in ratifying the Constitution they have suggested amendments and some of the amendments were suggested from all the States. It was a qualified acceptance. I regret to say that at the consideration stage not even one of those amendments were even considered in the Constituent Assembly. Hence the question remains whether the States have validly ratified the Constitution.

In future, when article 365 and article 371 are applied, what will be the position of the Legislatures of these States ? The Central Government can give a direction to the Government of the State to act something, because the Government of the State is completely under the control of the Centre. Suppose the State Legislature, who gets the authority from the people—as for example in Travancore-Cochin State Legislature which is elected already on adult franchise and which gets its authority from the people—refuses to enact certain provisions in a piece of legislation according to the direction of the Centre! What happens ? The Centre will under article 365 say that the country is not being governed as per the provisions of the Constitution. The

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administration may be taken up by the Centre. That means that for disobeying the directions from the Centre, the State will have to pay the penalty. Thereafter the Legislature of the State will not have the authority which they got from the people. Thereafter the State will not have the authority which they are given in the Constitution itself. I do not know whether it is right to terminate the authority of the Legislature which is derived from the people. So, I say at least for a period of ten years—the period can be extended also by the Parliament—clearly preference is given to the States which were known as Province and a discrimination made against what are known as Indian States.

There are the Directive Principles in the Constitution. Excepting in the Irish Constitution and also perhaps in the Weimar Constitution, no other Constitution in the world contains such Directive Principles which cannot be enforced by any body constituted under the Constitution. It looks like a party programme. What is the use of incorporating such a political treatise in the Constitution, which cannot be enforced by any body constituted under the Constitution? There are some similarities between the German Weimar Constitution and our Constitution, according to me. In the Weimar Constitution alone we find that Parliament is given extraordinary powers, even though therein residuary powers are vested in the States. Extraordinary powers are given to the Central executive also. In the Weimar Constitution, also, some Directive Principles were included which were not enforceable. It is that Constitution which produced a Hitler in its working afterwards. So, Sir, I must say that we from the States at least regret very much that, the representatives of the people of India are giving to themselves a Constitution which in some respects is similar to a Constitution which gave birth to a Hitler and which may, in future, if the powers come into the hands of an unscrupulous person make him a second Hitler.

I know that the success of a constitutional experiment depends more on the character of the people and on the conditions of the times than on the provisions contained in the Constitution itself. Hence, granting these defects, I know it is our duty now to make an honest endeavour to successfully work it. Let us believe that the darkness will be over soon and that in the morning to come we will be able to amend the Constitution and to treat all States alike, and to give some powers to the Constituent States also. Knowing its drawbacks let us try to successfully work it.

The Assembly then adjourned for Lunch till 3 P.M.

The Assembly re-assembled after Lunch at Three P.M., Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

Sardar Hukum Singh (East Punjab : Sikh) : Mr. President, Sir, I must start with paying my earnest and sincere tribute to our worthy President whose patience, forbearance and sense of justice have guided us throughout these proceeding and have contributed mostly to our successfully going through all these stages.

I join my other friends in congratulating the Drafting Committee and particularly its leader for cheerfully carrying through this heavy strain during these months. It was a gigantic task and they must be feeling relieved after it.

Of course we have produced the bulkiest Constitution in the world. The Constitution of other countries are much simpler. I am not happy at all over this achievement.

The glamour of our present leaders, I am afraid, has dimmed the vision of our experts. We should have looked beyond the present. We have presumed that the Union will be equally blessed with such heroes in the future as well.

In this Constitution, no particular pattern has been followed. A Constitution moulded out of different types will not endure, because it is neither indigenous nor a complete copy of any other single type. It is neither federal nor unitary. It is an enigmatic production, with every part stranger to the other.

The English make of Indian frame was already there as the Government of India Act, 1935. We have substituted an American head in the form of a President, replaced the old limbs by, an English parliamentary system, poured Australian flexibility in bones and flesh, infused Canadian look of a single judiciary and added an Irish appendix of Directive Principles and thus brought out a hybrid which we have been pleased to name the Indian Constitution. How it develops and what it bears is not known to anybody. I submit, Sir, we have overdone ourselves in certain respects and particularly in the Preamble. Besides justice, liberty and equality we have resolved to secure fraternity which is impossible of enforcement at this stage. Then again we have assured liberty of thought, which is funny. Thought is an inner working of the mind and the individual does not come into contact with another or with the State until he expresses himself. Such moral virtues are impossible of achievement particularly in a secular State. Further equality of status is an empty boast under the present Constitution. It could only be claimed in a communist State.

Then I come to Fundamental Principles. On a first glance it would appear that the safeguarding of the Fundamental Rights set forth in Part III of the Constitution is complete. The charter is very exhaustive in description and the protection of these rights is also entrusted to the Supreme Court and ostensibly guaranteed.

But on closer examination it would be found that these Rights and particularly the Rights to Freedom in article 19 are hedged round with exceptions and reservations that make them ineffective in those situations when their

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impairment can ordinarily be apprehended. Like other Constitutions, ours also has assigned separate spheres to Government and liberty, but in doing so it has allowed so much latitude to the Legislature in the matter of defining inalienable rights as to make them exceedingly precarious, and robbed them of the guarantee which could make them secure.

In his opening speech moving for the introduction of the Constitution on 4th of November 1948 Dr. Ambedkar had observed :

“Democracy in India is only a top-dressing on Indian Soil, which is essentially undemocratic.”

“In these circumstances”, he said, “it is wiser not to trust the legislature to prescribe the forms of administration.”

I wish that conviction had guided our decisions. But I find that the pervading spirit all through is the greater trust and confidence in the Legislature rather than in the Judiciary.

In my view this is an incorrect and wrong foundation on which this structure has been built. The Judiciary can be more safely entrusted with the holding of the balance between the individual and the State.

Practically all the rights in article 19 are based on one fundamental provision, namely, that the various rights are subject to the existing restrictive law or laws which may be made hereafter. What change that a citizen would feel by the commencement of this Constitution ? We were told that even in U.S.A. the rights are not unqualified, and for every limitation enacted in article 19 it was said that at least one ruling of the Supreme Court could be quoted in support of that. What a funny logic ? If in an extreme case, under particular circumstances, the Supreme Court declared any limitation, does it stand to reason that the same limitation ought to have been made a provision of the Constitution to be enforced at all times whenever it suited the Legislature so to do ? The crucial difference is that in U.S.A. the Supreme Court is the final judge of the circumstances when any restriction is to be imposed, while in our Constitution it is the Legislature that would be the final one. We could choose either of the two methods, one in which constitutional safeguards are wholly lacking just as in U. K. and the other in which such safeguards are as complete as human ingenuity could make them, as in U.S.A. In our Constitution a compromise has been effected which is impossible. We have imposed prohibitions on the Legislature, thus conceding that there is danger from that side, and then proceeded to permit the legislature itself to restrict the liberty. The feared robber is made the judge and the possible trespasser the sole arbiter. This is a clear deception.

Then again there are emergency provisions. As soon as there is a declaration under 358 on the report of a Governor or Rajpramukh, all liberties worth the name come to an end. The mere Proclamation of Emergency ought not to have been allowed to abrogate civil liberties. Civil liberty should come to an end only when civil authority comes to an end. These rights are incomplete without a right to work. Can you imagine of any liberty being enjoyed by a citizen who goes about hungry for want of employment, who is haunted by the fear that his family would be without food as he has not got work ? Have we made any provision for such an individual ? Can such a man have any interest in the administration except to blow it up ? Unless material insecurity is eliminated personal freedoms are paper safeguards and worth nothing.

So far as the Directive Principles are concerned, I have already referred to this Part as a useless Appendix. (An honourable Member : Is, it appendix or appendicitis?) It is ‘appendix’; I accept that I am wrong; after all it grows on

the appendix and therefore it is called appendicitis. I believe rights are no rights unless enforceable. It was admitted in the beginning that it was not proper to insert them in the midst of the Constitution but the mistake has been persisted. The perusal of these principles in Part IV leads one to believe that ours is going to be a Socialist State. But there is nothing in the rest of the Constitution in support of these pious platitudes.

Then we come to the President, Part V. He is to be the executive head of the Union. In the introductory speech the President was described to occupy a position similar to the King of England; the head of the State but not of the Executive; to represent the nation and not to rule it as the symbol of the nation. His place in the administration was stated as that of a ceremonial device on the seal. But under the Constitution now settled he has been given enormous powers. Elected by the members of the Legislatures under article 54 he would most probably be the choice of the majority party. He can only be impeached for breach of the Constitution under article 61 and not for any other misbehaviour. That in my opinion is a grave defect in the Constitution.

My second objection is about article 68(2). This can be misused. The President might, in the interest of the Party which placed him in power resign his office a few months before the expiry of his term, and may get himself re-elected for another full term of five years, though the party might be defeated in the impending elections.

Then again under article 75 the President is authorized to appoint the Prime Minister. It is not clearly laid down that he must necessarily be the leader of the majority or even be an elected member of the House of the People. Strictly according to the provision a non-member may be appointed. In a written Constitution it should not have been left to conventions which are still to grow in our country.

There are other provisions under articles 123, 358, 75(2) and others which may provide an ambitious politician an opportunity to assume dictatorial powers. While professedly acting within the strict letter of the settled Constitution which can be interpreted by its plain words and not unexpressed spirit. The possibility of a virtuous dictator being corrupted by power may be remote in the case of our present leaders, but these immortals of history cannot be immortals of physical bodies as well, and the Constitution has not taken that fact into account. We have been misled by the present. We should have realised that the Constitution would survive our present leaders. We have not guarded against the emergence of dictators. I have grave misgivings against investing a single individual with such wide powers, however great he might be.

Then I come to the special provisions relating to the minorities. It would be interesting to know how an ordinary Sikh mind is working in these days. If the sacrifices for freedom were to be looked back upon, the Sikhs can feel well proud of their contributions. In 1872 in the well-known Kuka rebellion more than 68 Sikhs were blown off with cannons. In 1907 S. Ajit Singh, Kishen Singh and others played a very important part in the movement. During 1912-16 the Ghadar movement got considerable momentum by the advent of revolutionaries brought in by Kamagata Maru and other ships. Most of them were Sikhs who died cheerfully on the gallows for the love of their country. During Martial Law Regime in 1919 the Sikhs raised a bold and open revolt against the British and underwent many hardships. The Gurdwara movement, though directly organised for religious reform in Gurdwaras had its political aspect no less important, as by the huge sufferings and strict restraint the Sikhs lowered the prestige of the rulers.

In 1937 the Akali Dal formed an alliance with the Congress and succeeded in elections on national programme against the Unionist alliance with the bureaucracy. That union must have grown closer and had been further cemented

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but for the Congress wooing the Muslim League in order to put up a concerted fight. The Sikhs grew apprehensive that the Congress, in their anxiety to win freedom, otherwise very commendable, might hand over their home-land to the Muslims and they might be subjugated for ever. These fears led a section of the Sikh community to chalk out an independent line of action. But, even after that, preserving their individual identity, this small community supported the Congress very faithfully in the negotiations during 1942, 1945 and 1946.

The Cabinet Mission Plan was unjust and unfair for the Sikhs and it was so acknowledged by the Congress Working Committee in their resolution dated 25th June 1946. The Sikhs got indignant and the Panthic Prathinidhi Board boycotted the Constituent Assembly by their resolution dated 5th July 1946 when the Muslim League had accepted it. The Congress Working Committee in their meeting of 10th August 1946 appealed to the Sikhs to reconsider their decision and participate in the Constituent Assembly. The Working Committee assured the Sikhs that the "Congress will give them an possible support in removing their legitimate grievances and in securing adequate safeguards for the protection of their just interests". Immediately, the Sikhs, on this assurance, reversed their decision, and directed their Sikh representatives to raise the question of safeguards in the Assembly at the proper time in the hope that the Congress would support the Sikh demands in accordance with the assurances dated 10th August 1946 and their promises earlier in 1929. Since that day, the Sikhs made common cause with the Congress and stood firmly by it. Then again on 6th January 1947, the Congress, in accepting the interpretation put forward by the British Government on the Cabinet Mission Plan, made it clear that the rights of the Sikhs in the Punjab should not be jeopardised. Later, on 8th March 1947 the Working Committee assured the Sikhs that "they would keep in close touch with the representatives of the Sikhs and other groups with a view to co-operating with them in the steps that may have to be taken and in safeguarding their interests"

The Congress as announcing again and again that all minorities shall have proper safeguards. The Muslims refused to be contented with any safeguards, but insisted on having a home for themselves. They got Pakistan and can have no further grievance. The Anglo-Indian community has been sufficiently protected. They can have no grouse. The Parsees and the Christians are far more advanced educationally and economically and have declared that they do not want any safeguards. It is only the Sikh community that earnestly desired, repeatedly requested and constantly cried for safeguards but have been denied any consideration. They fail to understand why they have met this treatment. The majority can oppress, it can even suppress the minority; but it cannot infuse contentment or satisfaction by these methods.

Separate electorates have been done away with; the Sikhs submitted to it cheerfully. The reservation on population basis in the legislatures was abolished. Their representatives fell in line with the others. But the economic safeguards about services were never voluntarily given up. On scrutiny, it appears to be a very trivial thing. But it was a test case where the majority was on trial. It was said that it was a blot to acknowledge any religious minority; but the Anglo-Indians have been given safeguards in the Constitution. They are a religious as well as a racial minority according to Government's own publication. The entry about consideration of claims of Sikh community to services would have disfigured the Constitution, we were told here; but a similar entry about the Scheduled Castes and Scheduled Tribes and the Anglo-Indians does not impair its beauty. The whole economy of the Sikh community depended upon agriculture and army service. Lands have been left in Pakistan and their proportion in the army since the partition has been greatly reduced and is being reduced every day.

Their demands were very simple. They wanted a Punjabi speaking province. That has been denied. It was not a communal demand, but a territorial one. But the majority community in the province went so far as to disown their mother tongue. That language is in danger on account of aggressive Communalism of the majority. Andhra province is a settled fact; other cases are to be looked into, but North India cannot even be considered for it. The next was this consideration for services. That has also been denied.

Mr. Khandekar today referred that there was no untouchability among the Sikhs, and that seats had been taken out of the Scheduled Castes seats. I may briefly refer to these observations of his. Certainly according to the Sikh religion, there is no untouchability. But does it stand to reason that if there are two sons of one father and they are untouchables and one embraces the Sikh religion, he should be neglected simply because he professes that religion, different from the one which he originally professed? Would that not have been discrimination on account of religion? I think that injustice has been removed and the Scheduled Castes should have no complaint about it. Then again, he made a remark that Sikhs have been given seats out of the Scheduled Castes quota. That was what I could not comprehend, because reservation for the Scheduled Castes and Scheduled Tribes is to be made on the basis of population. If certain castes have been included in the Scheduled Castes, then, certainly they would bring in their population and their seats will be increased. It does not stand to reason that the Sikhs have taken away any part of their quota which the Scheduled Castes possess.

Naturally, under these circumstances, as I have stated, the Sikhs feel utterly disappointed and frustrated. They feel that they have been discriminated against. Let it not be misunderstood that the Sikh community has agreed to this Constitution. I wish to record an emphatic protest here. My community cannot subscribe its assent to this historic document.

I now come to centralisation of powers. For the last thirty years, the policy had been progressing towards provincial autonomy. There were valid reasons for it. The vastness of the country, its multifarious population organised in units having different languages, varied social systems, uneven economic development, made it impossible to have uniformity everywhere. Even in old regions whenever centralisation was attempted in India, the system cracked under its own weight. Independent units with greater responsibility and willing co-operation would have lent greater strength. In our Constitution, each article tends to sap the local autonomy and makes the provinces irresponsible.

To sum up, our Constitution does not give anything substantial or concrete to the individual. It only gives solemn promises and pious platitudes. The Fundamental Rights are worthless as they have so many restrictions and are left at the mercy of the legislature. The right to work is not guaranteed. There is no assurance for old age maintenance or provision during sickness or loss of capacity. Even free primary education has not been provided for. The minorities and particularly the Sikhs have been ignored and completely neglected. The Provincial units have been reduced to Municipal boards. The common man has been squeezed out of politics and the President has been enthroned as the Great Moghul to rule from Delhi with enough splendour and grandeur. Any ambitious President would discover a rich find in this Constitution to declare himself as a dictator and yet apparently be acting within this Constitution. The discontent and dissatisfaction is sure to grow without any economic solution of difficulties of the masses. This shall consequently facilitate the development of administration into a fascist State for which there is enough provision in our Constitution. May we be saved from such contingencies!

Shri S. Nagappa (Madras: General): Mr. President, Sir, very many speakers that spoke before me have congratulated the Drafting Committee and its Chairman. I join them, Sir, I do so.

From the point of view of the Scheduled Classes, their point was achieved on the day on which Dr. Ambedkar was elected as Chairman of the Drafting Committee. He had been one of the stoutest Champions of the cause of the Scheduled Classes. He was elected as the Chairman Even since he was elected, the other members of the Scheduled Classes were very reluctant to cooperate; not because they did not want to co-operate, but because they knew Dr. Ambedkar who was a champion of their cause was there to watch and provide such articles that will be safeguarding the interests of the Scheduled Classes. Well, Sir, this has proved to what heights Dr. Ambedkar, though he is a member of the Scheduled Classes, if an opportunity was given, can rise. He has proved this by his efficiency and the able way in which he has drafted and piloted this Constitution. Now I think this stigma of inefficiency attached to the Scheduled Classes will be washed away and will not be attached hereafter only if opportunities are given, they will prove better than anybody else. Now for having played such a great part, on behalf of the Scheduled Classes I congratulate Dr. Ambedkar. It is not the strength of the Scheduled Classes that made him the President of the Drafting Committee but it is the generosity of the majority party and I am very much thankful to them for the same.

Now I call this a Constitution for the benefit and betterment of the common man. It can be called a Common man's Constitution. This assures the right of common people more than that of the landed aristocracy or of industrialists and capitalists. This will go a long way for the betterment of the common people of this country. It is so because though Dr. Ambedkar happens to be a man of high status in society, yet he has been drawn from the lot of the common people. He has not forgotten the interest of the common people and he has been good enough to do all that is possible for their betterment. Articles 14 to 17 go a long way for the betterment of Scheduled Classes, Article 14 assures equality before law particularly to everyone. This is the most important one. There was no equality before law all these days. Article 15 forbids discrimination on the ground of race, religion, caste or community. The country was in need of such a Constitution. Article 16 gives equal opportunity to everyone. No doubt opportunities were not much these days. I hope in days to come, though they are equal from my point of view and from the point of view of the Constitution, I feel that the Scheduled Classes will get better opportunities than others.

I am very much thankful to the majority community for their large heartedness, for having acceded to our—I do not say demand—requests that we should be given reservations for some years to come. We too would have been glad to forego our reservations if we had the status of other minorities, the economic status, the social status and the educational status which the other minorities are enjoying today. Unfortunately we were not only lagging behind in all these respects but there was also a stigma attached to us namely the untouchability. I am thankful to the majority community for having recognized what wrong they have done to us all these centuries. They have now been good enough to abolish this untouchability by a statutory provision. We are abolishing untouchability today, but I would request the framers of this Constitution and those who are going to work this Constitution from the 26th January 1950 to see that in every bit of it, every letter and word and spirit this untouchability is removed from this country. The responsibility lies more on your-shoulders, as you have taken the pledge that you should bring us upto your level within 10 years time. I hope with this goodwill, with your generosity, we will be able to

come to that level. We will also endeavour on our part to come to that level at the earliest opportunity that is possible.

Now, Sir, another unique feature of this Constitution is that you have been good enough to abolish forced labour. That was one of the features under which these poor classes were suffering all these ages. You have now abolished it under Article 23. I do not agree with article 31 which gives the right of property for those who are propertied. I do not, say that all the people of this country should be poor, but when you want to take away some of the properties for the betterment of the State as a whole, you should not have given them any compensation. If you want to give them compensation, there should have been a limit. There is no such limit at all according to this article. If there is a capitalist Government in power, they can give any amount—even more than the real cost of the property which you are going to acquire. It is said ‘just compensation’. What is fair and just from your point of view may not be really fair from other point of view. I know under this Constitution there is no scope for a Capitalist Government to come into existence. As you have been good enough to extend the adult suffrage, the common people are bound to capture power—if not today, some other day. They are bound to be at the helm of affairs. Anyhow during the interim period there is every scope for a capitalist Government to be at the helm of affairs. Under the Directive Principles you have been good enough to direct the country and the provincial Governments to see that the wage-earner is given his minimum wages. He is protected from the exploitation of industrialists, capitalists or agricultural capitalists. I think the country will be benefited by this.

Again this country consists of illiterates but this Constitution provides by article 45 that everyone who is below 14 years of age is made literate. They are given education before 14 years of age at the cost of Government. That will be free and compulsory education. That is a good point for labour and poor people. This Constitution has given protection not only by giving reservation of seats to Scheduled Castes but it has given other kinds of protection. It has given reservation in service and their appointment in services will be considered and they will be given their due share in services provided sufficient number of qualified people are coming forward. I hope this article will go a long way to help the Scheduled Castes economically and this will be translated into action—to the very spirit of it, to the letter of it and to the word of it. This depends more on those who have framed this Constitution to see that it is properly worked. A constitution if it is not worked with all the spirit with which it has been enacted, will become a dead letter and only a paper constitution but not a practical Constitution. To make it practical it depends more on the people that work it.

Coming to elections of Governors, before we entered into this Constituent Assembly there was a rumour that Governors should be elected. Then I thought if the Governors are to be elected, there was a very poor chance of a Scheduled Class member being elected as Governor because he is to be elected by the whole province. No doubt even if a large part of the country were in favour of them, some may be against them, not because they did not like Scheduled Classes, but in their own interest to become Governors themselves they would have opposed them. Now the President have given the power of appointing. That itself assures that there would be some Governors from the Scheduled Classes.

Again, on the question of Service Commission, I am not generally in agreement with this article especially on the age question. If they can serve in the Commission up to 65 years, it is too long a period for any public servant to be in service. I say so especially to the Federal Public Service Commission where

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if they are retained till 65 years, the work will suffer a lot. Even now, people are being interviewed for a job and then they have got to wait for four or even six months for a reply. They are made to wait and wait. That is because there are old people on the Commission. They cannot understand the country and they cannot move as quickly as they are required and so the result is stagnation of work. So I am not in agreement with this article which allows the members of the Commission to be there up to sixty years of age. And then they should have served ten years under the Government. But I may point out when you fill up the Provincial Commission or the Central Commission, you very rarely get members of the Scheduled Castes with this qualification. It would have been better if you had made some such provision which might have enabled the representatives of the poor people to be in the Commissions, Provincial and Federal.

Sir, as regards the bifurcation of the judiciary from the executive, the principle has been accepted in this Constitution. Under this, especially the poor people were suffering a lot, because the persons in whom these two powers were combined were misusing, more often than using them for the betterment of the people. I say so, Sir, because that has been my experience. This Constitution has recognised this principle. This was the slogan of the Congress too and the Congress was agitating for the separation of the judiciary from the executive. I am proud that province of Madras has already begun this bifurcation and it is going ahead with it. The U.P. also has started, and I hope this will be followed by the remaining provinces also and they will see that this bifurcation is effected as soon as possible, in the interest of the poor man who is expecting justice from this government.

Sir, I then come to article 335 where the claims of the Scheduled Castes, especially in regard to the services, have been considered. It is said that these claims will be taken into consideration. It should not be always in the consideration stage, but the claims should be recognised and fulfilled, and that is the most important part of the Constitution.

Under article 391, I am glad to say there is provision to make separate provinces on linguistic basis and it provides that at any time separate provinces can be created. I am glad the Congress High Command has accepted the creation of the Andhra Province, and I hope you will be good enough to see that province is brought into existence as early as possible. Sir, when the Dhar Commission was appointed by you, that Commission made it clear that there was a part in Andhra called the Rayalseema and there was a pact or agreement between the Sircarians and the people of Rayalseema that representation should be given to the latter, not on the basis of population, but on territorial basis, that every district should get equal share of representation. But now it has been accepted on population basis, and that has gone against the people of Rayalseema. But even now it is open to the people of the Sircars to be large-hearted and say that representation for themselves will be as one for one lakh of the population and for the Rayalseema at the rate of one for every seventy-five thousand of the population. If this is done, it will go a long way to help the people of the Rayalseema. No doubt, the House did not agree with our point of view, although there was a pact between the people concerned, the Sircarians and the Rayalseema people. But we are prepared to accept the present decision of the Drafting Committee. They did not agree to our view because they never wanted to give any representation, on the ground that a particular area was backward. But when they have given reservation for particular sections of the people, because they were backward I do not see why they could not agree to give the same thing because a particular area is backward. But anyhow we have agreed to this decision, though I would point out that this works very hard on the people of the

Rayalseema. Now we have to depend on the Sircar people, but I hope they will be generous enough to recognise our rights and do us justice.

Article 120-A relating to the language question was one of the most difficult problems that this House had to solve. My friends from the U.P. were very stiff and very particular that Hindi should be accepted and Hindi should be in the language of the country, the very day on which the Constitution is brought into force. But, Sir, after great difficulty, the people coming from the South were able to convince them and we were able to carry them with us, and they were good enough to grant us at least fifteen years time. Even this period of fifteen years is not enough. I do not think within this time our people will be able to come up and learn Hindi in the Devnagari script. No doubt, I have no quarrel with the script. But whether people of my part will be in a position to come up to the level that the U.P. are expecting them to do, within fifteen years, that remains to be seen. Anyhow, they have been good enough to concede that time limit. And then the question of numerals was there and that was very important. It took three days' debate and then it was decided. Although the numerals were called "international numerals" we had to convince them that they were really Indian numerals first, and they have conceded after all. It is a great achievement from the point of view of people from South India. I hope my friends from North India will not mistake me, when I say that the difficulty is ours, because we have to learn the language and not they.

Sir, I am glad we have come to the last stage of this Constitution. It is about to begin, on the 26th January, and I once again make an appeal to the Members that we should make it a point—because most of them will be the people who will work this Constitution to see that it is worked in the spirit in which it is enacted. Only then can we realise the dreams with which the people have enacted this Constitution. Establishing of *gram panchayats* and cottage industries, introduction of prohibition,—all these things will go a long way to help the poor people.

A unique feature of this Constitution is that the rights of the agricultural labourers have been recognised by this Constitution. Though the agricultural labour forms the bulk of the population, though he produces the maximum wealth of this country, his claims were ignored simply because he could not organise, he could not come forward, he could not strike, though he could stand for the prosperity of the country. When I moved the amendment asking for agricultural labour to be included in labour, the Drafting Committee were kind enough to accept it. I leave it to the honourable Members, while working out this Constitution, to see that the just claims of the agricultural labour are recognised. I support this Constitution, not as my honourable Friend Mr. Kamath did with limited support. I support this Constitution without any reservation, either mental or physical.

Shri Jaspal Roy Kapoor (United Provinces: General) : Mr. President, Sir, the discussion on the Third Reading of this Constitution has been going on now for the last several days and every little article of this Constitution has been under discussion for the last about three years now. That being so, one can hardly add anything which is new. If even then I venture to address this House, it is not because I would aim at anything original, but because on an occasion like this when the heart is full of happiness, gratitude and reverence, there is a natural urge for one to pour out his feelings. These speeches on the Third Reading, I do not think, are in the nature of a postmortem examination as our honourable Friend. Shri Saadula stated this morning, for we are not analysing or dissecting anything which is dead and gone. But we are here on this occasion to give our blessings to something which is newly born, something which we wish would work successfully and live long and prosper and cast happiness all round.

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The uppermost feeling on this occasion is that we should pay our homage to Mahatma Gandhi, the Father of the Nation, under whose guidance and because of whose great sacrifices we have been able to break the shackles of slavery and to secure freedom for this country. On this occasion our thoughts also go out in grateful reverence to the departed patriots like Dadabhai Naoroji, Surendranath Banerji, Gokhale, Tilak, Motilal Nehru, Malayiyaji and others, and to many a martyr, known and unknown, who has lost his life in freedom's battle. But the latest sacrifices that have been made in the cause of our country's freedom are those of our refugee brethren, who have been displaced from Western Pakistan and also from Eastern Pakistan. Their sacrifices have been the latest and it will be, sheer ingratitude on our part if we were to ignore them. Not only must we not ignore them, but we must see to it that we do everything that is possible on our part to remove their misery. Providence will not forgive us if we neglect their cause. So long as we are not in a position to rehabilitate them, I think we shall not be able to create an atmosphere in the country which is necessary for putting this Constitution on a sound footing. I feel that our position is very much like that of a peacock who, enchanted by the beauty of its feathers dances in joy, but when he, looks at his feet begins to weep and shed tears. That is exactly how I think we feel today. While we are happy at the freedom that we have attained, when we think of the partition of the country and the more so when we think of the misery of our displaced brethren, we certainly feel that we cannot fully enjoy the fruits of freedom. I submit therefore that we must do everything possible to recognise the great sacrifices that our displaced brethren have had to undergo for the sake of securing the freedom of the country, and the problem of their rehabilitation must be given top priority.

Dr. Ambedkar and his colleagues have rightly deserved the praise which has been showered on them by almost every speaker. I had started with a prejudice against Dr. Ambedkar, for I had felt very sore many years ago when Mahatma Gandhi was undergoing fast against grant of separate electorates to the Scheduled Castes and I had read in the papers the news that when he had been invited to see Mahatma Gandhi to discuss that question, he once said that for a day or two he was not free because he had to attend to some professional engagements. I felt very sorry then. I do not know how far it is correct. But even if it was so, the great work that he has done during these three years has washed away that particular sin or any other sins which he may have committed. I have developed an admiration and also affection for Dr. Ambedkar for the very useful work and the very patriotic work which he has done. His very first speech in this Assembly had dispelled all my doubts and fears in relation to him and today I can say that I consider him to be one of the best patriots of this country. I have always found him to bring to bear upon the subject a very constructive approach. On many an occasion when there seemed to be a deadlock, he came forward with suggestions which resolved those deadlocks. I always found him rise to the occasion except, unfortunately, on one occasion and that was when he did not agree to give up reservation of seats for the Scheduled Castes. Every other minority gave up the right of reservation of seats, but unfortunately Dr. Ambedkar would not agree to it. I wish he could have also agreed to it and I could have then been in a position today to say that he rose equal to every occasion, but unfortunately I cannot say it today. Be that as it may, the great work he has done except this must be recognised in very grateful terms.

I must also express my gratitude to Shri B. N. Rau, Mr Mukherjee and his loyal lieutenants for the very good and efficient work that they have all done. Shri B. N. Rau kept on flooding on us precedents after precedents of Constitutions as are in the different parts of the world and they have been very helpful to us.

And so now we have come to the close of our labours. We have done our job well with mutual accommodation, understanding and common consent. We are proud of our achievement. But this has been made possible only under your wise guidance, Mr. President. You have shown a tremendous and marvellous patience. You have extended to us unfailing courtesy. You have given to us the fullest freedom for expressing our views. You have not merely regulated the proceedings here but you have stepped in whenever you thought that the decisions which we were going to take were not right, and almost on every occasion when you intervened things were set right. It is, therefore, that we have been able to prepare a Constitution which is worthy of us and deserves the support of every one of us here and outside in the country.

The one great thing about this Constitution is that almost every clause of it has been adopted with unanimity and in agreement with those who were affected. Some might differ with a clause here or others might differ with a clause elsewhere but on the whole the Constitution represents the greatest common measure of agreement among all sections of this House. I do not ignore the fact that there are some irreconcilables like Seth Damodar Swarup, Prof. Shah and Shri Lakshminarayan Sahu. They are some who for reasons of their own can never be convinced for nothing can convince those who are bent upon not being convinced, and we should not therefore take a very serious note of their opposition. So far as Seth Damodar Swarup, is concerned he contended that we are not a representative body, not having, been elected on adult suffrage. While we may not agree with him in his view, so far as he himself is concerned admittedly according to his own confession he is not representative of anybody and fortified by that conviction that he is here not to represent anybody, I believe he has allowed himself to indulge in irresponsible attack, because perhaps he feels that he can safely talk anything not being here in a representative capacity.

Though the number of such hostile critics is not many I must confess that it has been a matter of regret and surprise to me, as I believe it must be so to many others, that the latest recruit to the ranks of hostile critics is a person no less than Sri Sampurnanand, Education Minister of U.P. Last Saturday while addressing the students at the University Convocation at Agra he condemned the Constitution and decried it outright. While I was listening to his speech sitting not far from him I was wondering whether that was the sort of speech that should have been delivered to students who should be told what their duties are when they are entering the threshold of the world. He ridiculed the Constitution outright and perhaps expected the new alumni of the Agra University to also similarly ridicule the Constitution. One would have expected a distinguished and responsible person like him to call upon the students to work the Constitution and make it a success. It was an occasion when wholesome advice should have been given to the new graduates. But it was otherwise. It was ill-conceived, ill-timed and ill-delivered.

With your permission, Sir, I would like to refer to three or four things that he said. He said :

“It is my conviction that this Constitution is not really worthy of us”

Further on he says that “it is a large tome”. He considered it so weighty that even his stout shoulders could not carry its weight. He has of course not given us the exact weight of this “tome” or how much his shoulders could carry. Later he says :

“A Constitution is something of a sacred character which inspires future generations. It is in the case of important States the embodiment of a living, faith, the philosophy of life of those who framed it. You have only to look at the Soviet Constitution to realise this.”

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Here we have an inkling into his mind and we find which way his sympathy lies. Then he goes on to say.

“Judged by this criterion, our Constitution is a miserable failure. The spirit of Indian culture has not breathed on it; the Gandhism by which we swear so vehemently at home and abroad, does not inspire it. It is just a piece of legislation like, say, the Motor Vehicles Act.”

What contemptuous and unworthy description of this sacred document! Ultimately, as if this was not enough, he says :

“There are other serious defects. I shall refer only to one. The attempt at centralisation of all power is hardly veiled and provincial governments have been sought to be reduced to the position of agents of the Centre. This is bad. Centralisation has been tried before in this country. The results of the experiments are not unknown to students of history.”

I do not know which history he has studied. The history of centralisation that we know of is not the history which he seems to have studied. History rather undoubtedly proves that whenever there has been no centralisation in this country it has been over-run by foreigners. It seems that the history which Sri Sampurnanand has read is one of which none of us is aware.

One of the criticisms against this Constitution is that it is not inspired by Gandhism, as Sri Sampurnanand has said and some other friends also have said it, though their number is small. But nothing is farther from truth than this. The chapter on Fundamental Rights and that on Directive Principles give a direct lie to such criticism. What is it that Mahatma Gandhi stood for ? The thing nearest to his heart was the removal of untouchability. Have we not laid down in definite and specific terms in this Constitution that hereafter there shall be no untouchability and if it is practised it shall be an offence punishable under the law ?

The second thing that Gandhiji wanted was that power should be in the hands of the masses, the peasants and labourers. Have we not really provided for that also ? What does adult suffrage mean ? We have taken a bold step in providing adult suffrage. It is a risky experiment which we are going to make. In deference to the wishes of Mahatmaji we are going to take that risk and I hope and trust that we shall not be sorry over this experiment.

Thirdly, Gandhiji wanted a secular State. that religion should be a personal affair and that the State should have nothing to do with it, that persons professing any religion must have absolute freedom and should be equal in law and in the eyes of the State.

That is what we have provided for in this Constitution. While absolute religious freedom has been granted, we have made several provisions in the Act laying it down specifically that religion shall not be compulsorily taught even in educational institutions which receive any aid from the Government. What Mahatma Gandhi was particularly anxious about was that there should be village panchayats, and that they should enjoy a certain amount of autonomy. That is exactly what we have provided for in article 50 of our Constitution. This is what it says, :

“The State shall take steps to organise village panchayats and endow them with such powers of authority as may be necessary to enable them to function as units of self-government.”

So, this is what we have specifically provided for in the Constitution. Those who talk of centralization of Government would do well to look at article 40 in the Constitution. True, it is in the Directive Principles, but where else could it be, and what more could you do at this stage ? You could not have established village panchayats by one stroke of the pen or by merely waving a magic

wand. All that you could do was to set forth your firm determination to proceed in that direction and that is what we have done.

Sir, there is another thing which Mahatma Gandhi was anxious for and that was the spread of cottage industries. For that we have made a specific provision in the Constitution in article 43.

Then, again, Sir, prohibition was a very important plank in Mahatma Gandhi's programme. We have made a definite provision in that direction also under article 47, which finds a place in the chapter of Directive Principles.

Those who say that this Constitution is merely a copy of other Constitutions—would they please point out to us whether in any other Constitution of the World there is any mention of prohibition or cottage industries in the directive principles and policy of the State ? And yet they say that our Constitution does not bear the mark of Gandhism.

There are two more things that I would refer to and they are the question of the national language and the question as to what the policy of the State is going to be in international matters. So far as international matters are concerned we have laid it down in article 51 as Mahatma Gandhi would have wished us to do, and that is that the State shall endeavour to promote international peace and security, maintain just and honourable relations between nations, foster a respect for international law and treaty obligations in the dealings of organized peoples with one another and lastly, encourage the settlement of international disputes by arbitration, and not by having recourse to force or war. This is to be our policy in the international sphere, a policy which is in complete accord with the principles of truth and non-violence of which Mahatma Gandhi was to ardent an advocate.

Lastly, with regard to the question of one common national language: we have proceeded on the same lines on which Mahatma Gandhi would have wished us to proceed. I say this with full consciousness of the difference of opinion that existed on this question. But then ultimately when we passed the article in regard to this language question, we passed it in a manner that appears to me to be just what Mahatma Gandhi would have wished for except in one or two minor details. We have adopted Hindi as the national language, a language which is to be composed of all the languages and which has to take its shape from all the different languages of the country. Of course, Mahatma Gandhi; did not want domination of English and in that respect I must confess. Sir, that we must plead guilty to the charge that we have not met Ms wishes in full. Those friends of ours, those Honourable Members and responsible members here, who mention Mahatma Gandhi's name in season and out of season, would not let us throw away English within a short period : they insisted that English must continue to dominate for full 15 years. About this, Sir, I have no doubt in my mind, and I am sure none of us would have any honest doubt in our minds, that Mahatma Gandhi would never have relished the domination of English for 15 years and the idea of having English numerals. But then those who preach to others to follow Mahatma Gandhi's principles and policies and theories *in toto* were the loudest in insisting that we must have English for 15 long years and also English numerals. Well they have had it to their satisfaction. We have kept the English numerals.

Shri L. Krishnaswami Bharathi : They are absolutely Indian numerals.

Shri Jaspal Roy Kapoor : My honourable Friend says they are Indian numerals. I know, of course, that one fine morning this wisdom dawned on Mr. Bharathi and some others also felt that they would be wiser if they would accept what Mr. Bharathi had discovered namely, that these numerals were not English numerals but were Indian numerals, and we had then the funny

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description of Indian numerals in international form. Well, I would not care to refer to that story any more. It is a sorry story of self-deception. I have referred to it only in relation to the objections raised by Sri Sampurnanand and those of his way of thinking that our Constitution does not bear the impress of Gandhism.

Then, Sir, Sampurnanandji and some others like Seth Damodar Swarup said that the Socialistic principles did not find any place in this Constitution. In answer to that, I would refer them only to articles 39 and 41 of this Constitution which provide for public ownership of material resources of the country and equitable distribution of wealth. One of the articles lays down that there shall be equal pay for equal work.

These and other cognate articles would go to show that we have fully adopted socialistic principles. Of course we could lay them down only in the Directive Principles and could do nothing much beyond that.

The two fundamental things about this Constitution are the unity of the country and a strong Central Government, and surely none need be sorry for either reason. It is absolutely necessary that we must have a strong Centre. But we have a strong Centre only so far as it has been consistent within and reasonable provincial autonomy. We have not stopped there but, as I have already submitted, we have gone beyond that and we have provided for the creation of village panchayats which have to be given a very substantial amount of self-governing powers. So, though we have a strong Centre, it is not inconsistent with provincial autonomy and reasonable village autonomy even. So far as unity of the country is concerned, we have been wise enough to incorporate in the Constitution certain definite principles and I think nobody should be sorry for it excepting one who would like to bring about confusion and chaos in this country because his sympathies may be lying somewhere else outside the borders of this country.

We have provided that any person born in India and residing anywhere in the State shall be employed in any part of the country. That I consider to be a very wise article which we have adopted. I hope and trust that the power which has been given to Parliament to enact a law which may lay down that the residential qualification may be necessary in the case of certain appointments, would only be exercised with care and caution and not extensively at all.

Then we are going to have a uniform Civil Code for the whole country. That is a very good thing. It will be a great unifying factor. Then, above all, we have provided in the Constitution that all Indian States shall have the Constitution as the portions which hitherto used to be called provinces. Two years ago we could not have visualised that Princely India would disappear and that it would be integrated with the rest of India and that the whole country will have the same sort of Constitution. But today it is an accomplished fact. This is something of which we are proud and happy. I only wish that Kashmir should also have been brought in on the same level as other States but, unfortunately, much to our dissatisfaction and chagrin, if I may say so, this would not be done. This is a delicate subject and I will not say anything more on it.

One very good thing which I have found mentioned in article 25(2) at the last stage is a very good addition. This includes the Buddhists also among the Hindus. This is a new incorporation. This is a provision of which I feel particularly happy.

The President's bell has been rung and, my time, is up. I would not, therefore, refer to two or three points about which I had something to say. But it is well that the time is up now, because this prevents me from referring to

any defect in the Constitution for the time for pointing out the defects and offering hostile criticism is now over. It is time now that we create in the country a feeling of sanctity for this Constitution. It must be, as my honourable Friend Shri Santhanam pointed out, our endeavour now to make the people wholly understand the various provisions of the Constitution. We must create an atmosphere of respect and reverence for the Constitution so that every one may do his best to work it and make it a grand success. That only will bring us peace and plenty, prosperity and happiness. Our motto and slogan hereafter should be “Bharat samividhan ki Jayaho, Bharat Mata ki Jayaho”.

Shri Algu Rai Shastri (United Provinces) : * [Mr. President we are in the last lap of the journey of our Constitution making which we had undertaken after achieving our Independence. I consider, Sir, that the representatives of people who are in this House may congratulate themselves for their great good fortune for having seen the day when they could shape their own constitutional destiny after having smashed the chains of their slavery. The parallel for the present day that comes to my mind is the Coronation Ceremony of Ram. When he returned from his great triumph over Ravana to his Ajodhya his forest followers who have been described mythologically as monkeys and bears also accompanied him. On his ascending the throne of Ajodhya Rama gave them each a diamond necklace as a gift. I feel that the common people of India who had sacrificed and dedicated their all to the Congress and who by marching behind the great leaders whose efforts and courage has brought us the sweet fruit of freedom and as a result of whose efforts we are sitting here making the Constitution of our free India—These common people who gave their firm support to our leaders in achieving Independence just as the forest followers of Ram had supported him in recovering Sita from Ravan are now getting this reward of this diamond necklace of this great and big Constitution of free India from the hands of this Constituent Assembly composed of followers and statesmen. Sir, this Constitution really appears to me to be like a necklace of diamonds. I believe, Sir, that even if this Constitution were examined with a very critical eye or even with a hostile eye yet it would be very clear without any possibility of contradiction that the Unity it has established in a country which was divided into many states and which was practically going to pieces as a result of internecine differences is unrivalled and unparallel in the history of the world. I should say it is a unique achievement and we have been able to do so only through great daring, great industry and great goodwill. Each section of our country has made some sacrifice or the other and as a result of these sacrifices and compromises we have now this Constitution.

When the British quitted this country they granted complete Independence to all the princely potates of this land. They declared that the treaties which had been entered into with the princes would lapse on their departure and that the princes would become completely sovereign and free. These princes then had before them a great temptation of sticking to their privileges and rights. If that had happened there would have been so many rulers in the country and the struggle for power and political conflict would have been on so many fronts that it would have been impossible to resolve them successfully. But our princes had wisdom not to do so and through the surpassing ability of our great leader Sardar Vallabhbhai Patel and the far sightedness and skill of our leaders we have been able to bind India together into a common whole and thereby establish a greater India than there was during the British regime. Not only was there the princely question but linguistic question of our country was no less complex as ours is a multilingual country so much so that we have a saying that the taste of

* [] Translation of Hindustani speech.

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water changes after every ten bighas and so also does change the language of the people. It is therefore nothing short of a marvel in such a vast country, that there could have been accepted one language and one script as the official language of the whole State. I should say, Sir, that this has all been due to the great liberalism of all the component units of this great land who have in this matter sacrificed their individual interests for the sake of the common and the collective good. I believe, Sir, that in this achievement we owe a duty to praise and honour the leaders and our friends of different provinces who by skill or spirit of accommodation have made this decision possible. If we view it in this manner we find that we have been able to constitute a new nation. We have been able to constitute a national language and we have been able to gather in an organic whole the scattered fragments into which our country was divided as a result of the existence of many States. All this unique achievements is reflected in the Constitution and I may say, Sir, that we have been able to secure it only through hard and toilsome labour. It is also because, of these achievements that I consider this Constitution to be a diamond necklace which is being presented by the destiny makers of our nation to the people of India. In this connection, however, Sir, I find a difference between the parallel to which I had referred only a while ago. Is the diamond necklace given to Hanuman by Ranichandra was put to pieces by the former and he began to examine each piece to find whether it had on it the name of Ram or not, and he threw away all the jewel pieces on finding that they did not contain the name of Ram on or within them. But I do not think Sir, that this will be the case with this Constitution. I believe on the other hand that the people of this country would feel greatly pleased on getting this garland or necklace of the Constitution and would render thanks to the Lord at the moment when it puts it round its neck. I know, Sir, that those among the people who like Hanuman are lovers of the Lord and those who on examining the jewels and diamonds of this necklace of this Constitution find that it does not have on it or in it the name of the Lord would feel a little hesitation in accepting it. But what are the defects which can make these people hesitant to accept it. I think that it is my duty to point out these to the House today. It is my feeling Sir, that we have used very beautiful and sweet language in the preamble. But inspite of the fact that the language is sweet people like Hanuman who are lovers of the Lord feel that there is not within it the name of the Lord himself. Moreover, Sir, we do not find the least reference in this Constitution to the great heroes and martyrs whose sacrifices alone made it possible for us to have a Constitution for an Independent and free India. I really, Sir, do not know if there would be any occasion when there would be a reference to the great martyrs of the wars of our country in a document of such historic import. My feeling is, Sir, that history would record that in this Constitution there is no reference at all to the Father of our Nation nor to the martyrs of our country. We have, Sir, proudly, declared in the preamble that we are giving this Constitution to ourselves. This appears to me to be arising out of a sense of pride and vanity. I submit, Sir, that we should not do anything in pride as the saying is 'pride goes before a fall'. My submission is, Sir, that we should have referred to God in its opening sentences even though the reference would have consisted of a few words only. We should also have made a reference to the brave spirits whose constant striving and continuous sacrifices have brought us this day. And we should have paid, our homage in all respect to the Father of our Nation, Mahatma Gandhi under whose beneficence and blessings we are able to witness this glorious day. My submission is, Sir, that if it had contained a reference to Mahatma Gandhi it would have become as beautiful as would have been the diamond necklace for Hanuman if it had contained the name of Ram. But since, it is not there those of us who are devotees of the country, of the State and a God feel a sense of void

in certain aspects of this Constitution. Next Sir, when we Proceed further from the preamble we come across the chapter relating to the name of the country in which it is stated that India shall be a Union It is, Sir, a matter of deep sorrow and deep regret for me that we in this country did not rise above the slave mentality and we did not say frankly what Would be the name of our country. I think, Sir, there is no single country of the world which has such a clumsy name as we have given to our land that is 'India, that is Bharat'. The fact, Sir, is it is no name at all and we have failed very badly in giving it a proper name. My feeling is, Sir, that having a beautiful type of its own this Constitution has lost much of its sweet flavour on account of this shortcoming on account of the absence of the name of Ram and would not be acceptable to many Hanumans. Next, Sir, we find the clauses relating to citizenship. It is stated therein, Sir, that people who have migrated from Pakistan to India before a particular date shall be the citizens of India. The fact is, Sir, that we should have said plainly that the Hindus and the Sikhs who may not have acquired voluntarily the citizenship of a foreign state would be the citizens of this country whenever they may decide to come to this country. Had that been done there would not have been the right of acquisition of citizenship as is contained in the provision relating to a particular date on which persons could become citizens of India. As against this there should have been a severe limitation of the right of those who had left this country after partition but who have returned for reasons which may not be known to this country again but I find that in that matter that strictness has not been observed. Naturally those of us who have been ruled so long as by patriotic sentiments do not feel satisfied in regard to this matter. Next, Sir, is the chapter relating to fundamental rights. That chapter carries liberty and security to every individual and every citizen has been afforded the amplest rights and a pledge has also been given that their rights would be duly protected. But, Sir, even there we have failed to consider sufficiently the responsibility of the citizens of the State and their duty to make their country strong and powerful. We appear to provide safeguards to persons who are usually termed as minorities. I, however, submit Sir, that we should provide safeguards to those who need them. But at the same time I submit that these minorities should realise their duties towards the country and should understand the ways in which they can truly serve the country and the way in which they can keep off from their hearts loyalty to alien elements and they should not begin to have attachment to other countries of the world. For if they did so that would prove fatal to our own country. I find, Sir, however, that sufficient and adequate provisions have not been kept in the Constitution to realise this objective. Further, Sir, we have Prohibited the religious education being imparted in schools particularly in schools which are being ran by Government aid. I feel, however, Sir that this has not been wisely done. Mahatma Gandhi used to recite 'raghupati raghav raja ram pateet pavan seeta ram'. Mahatma Gandhi used to study Geeta and Ramayana practically every day. If these and other religious books would not be read I fail to see how proper citizenship would be developed in our country. The fact is, Sir, that if we banish religion I do not understand how we will be able to maintain a moral code. My feeling is that our fundamental rights have this fundamental defect. When we proceed further, Sir, we find that the so-called directive principles wherein the ideal of our country and the rights of the people are given that though the language is quite attractive, fine and dignified yet it is nowhere said that the State takes the responsibility to feed, to clothe and to provide the other basic needs of human life to its citizens. It is no doubt true that we have said that we shall strive to provide as far as Possible all these things. But, Sir, while we have very proudly referred in the Preamble to our giving this Constitution to ourselves we have suddenly become very weak and humble in a place where we should have very-emphatically and loudly declared that since we were assuming sovereignty to ourselves we would be making provision for the bread, the clothes, housing and the other

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basic needs of man in the chapter relating to fundamental rights. In our ancient polity it was the precept that the *raison d'être* of the State was to provide the basic needs of life to every one of its citizens. But Sir in this matter we in this Constitution have become extremely modest and we qualify our promise in this respect as far as possible and as far as it lies within the, economic capacity of the State, and in this way have shirked our real duty to our people. The fact is, therefore, that there is not the least hint of a promise of this type in the chapter of fundamental rights, and the people who were expecting to see some such thing in the body of this Constitution are today greatly disappointed. In our country, Sir, there are many a beggar who are lame or lepers or otherwise disabled have to pass their days in dire distress on the road sides and who pester the pedestrians by begging them for pice. I do not find any provision in this Constitution for the stoppage of that practice. The fact is that the State has not taken upon itself the responsibility of looking after them. In this connection we talk of our economic capacity and I consider it a great defect in this Constitution. Again Sir, it is my belief that there should have been a clear provision for prohibition of cow slaughter and the slaughter of other animals. It is for years that we have been trying to stop the slaughter of animals and particularly of cows. The people of this country had been chanting the words which enjoins the protection of the cows and even of the animals and even prohibit the sacrifices of any of them. But unfortunately in this Constitution we have made no reference to it. And we have not said that the slaughter of animals will be considered like the slaughter of a man. This again, Sir, is something which appears to me to be a short-coming.

With regard to the structure of the Union Government its executive, legislature, and judiciary I know that there is nothing new than what they are in the other parts of the world. Besides the provisions relating to them are more or less a copy of the Government of India Act 1935. These matters had caused disappointment to the patriotic and religious-minded for which I would like to say a few words today. The first question that comes to my mind is what relation we still continue to have with the Karachi Resolution. In that resolution it had been provided that with a view to bring the people and the administration together. Similarly the executive, legislature and the judiciary, accounting system and the public services of the Provinces have the same form and outline as they had under the Government of India Act 1935. Rs. 500 should be the maximum salary permissible to any person. But Sir, you will not find even the least mention to that maximum limit of Rs. 500/- throughout this Constitution. The Government expenditure is going up. Formerly we used to question the utility of the two Houses of a legislature. We could not understand why there should be one house to check the other. We felt that there was absolutely no necessity of two storeyed house consisting of an upper chamber and a lower chamber when one storeyed house of one chamber could alone do. But we actually find that under this Constitution almost every province has two Houses. The expenses have thus been increased extremely. But there is no provision to increase production. We have as a matter of fact not done anything to decrease the expenditure of the Government. We have not left many powers in the hands of the elected representatives of the people for we have not felt it safe to put ourselves entirely in their hands. Besides, we have increased the number of representatives considerably and the financial burden of that would fall heavily on the shoulders of the producers. We have referred to the salaries, the allowances and the other privileges and facilities to be Provided to the officials under this Constitution. But we have forgotten while doing so that the entire burden would fall on the back of the poor people of this country. We have as a matter of fact failed to keep in our view the

weak skeleton framework on which this splendid building is being raised. We have entirely ignored the standard of life of our people. Today we look more to the comforts and facilities of the Government officials whom we praise in and out of day. It is no doubt true that the government officials are our kith and kin and not aliens. But when they are praised, when their facilities are provided for and when their Salaries are compared to those of the foreign employers and on the basis of their responsibility, it is asked whether Congressmen could do otherwise I feel somewhat disappointed. The fact is, Sir, that the Congressmen are not after government jobs. Their ideal has been and is one of sacrifice and service. They had always dedicated their lives to reinforce the foundations of the, temple of the nation. In this connection a poem composed by me comes to my mind.

देश जाति हित नोवं के हम कंकड होवे ।
आसुरी संयन्ति नारी के कत कंकण सोहे ।

That is, we may be the pebbles of the foundation of the building of welfare of our country and nation. We should not be the pebbles of gold for shining in the bangles of handsome and prosperous ladies and coquettes.

Any Congressman who has been striving hard for the Congress since 1920, would not like to shine as the frontal stone of any building. He would consider it his, duty to dedicate his life in the service of the nation. When the mention of salaries etc. in respect of the services in made, it is only because we took up the question of services, but we ignored the masses who have been suffering and who have been exploited for so many years, I wish to draw your attention to their hardships. We have ignored those unfortunate people, and have failed to pay sufficient attention to them. If sufficient attention is not paid to them, I can say definitely that they would feel it and think they have been transferred from the white bureaucracy to a brown bureaucracy, that their standard of life cannot be raised, while we are worried about raising the standard of life of their servants. None worries about the masses who are the earners, whose earnings are sustaining this whole structure. We do not worry about production, about raising the standard of life of the masses, our attention has been attracted towards those who are comparatively more prosperous, happier, and we think of them day and night so that they may not get annoyed. How can they do so ? We have not monopolised patriotism, their hearts also thump with patriotism.

Sir, your own life has been that of dedication, Pandit Jawaharlal's life has been such and Sardar Patel's life has been one of dedication, you have not led a royal life. You have not taken up power for the sake of ruling or collecting wealth, you have come here for the producer, for the masses. The nation cannot take on itself the responsibility of those people who enjoy like parasites at the cost of the poor. We should take upon ourselves the responsibility for raising the standard of life of the masses, and such a thing is absent in this Constitution.

I wish to conclude my talk, after inviting your attention to one or two things more. This I say only because such are the causes which afford an opportunity to the opponents to criticise, and these things pain the patriotic section. I would say one thing, and that is this, that in the structure that we have framed, much power has been vested in the Centre. The Secretary of State exercised control over us formerly, now the States who have acceded will be under our control. If such a control continues, the initiative will be gone. If our Central Government becomes weak, our units will also become weak, and our nation will perish. But if the Centre become so strong, that it begins to reprimand all its units, as if its children, like Aurangzeb, there would be none to take upon himself the responsibility about the people. Hence there, should be harmony between these

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two. There must need be a control over the defence,—we should see that there is no infiltration from the side of Kashmir that none infiltrates from the side of Assam, that the enemy does not enter from any side. In this matter we would try to control the units, but ordinarily the Centre would not check the fullest development of its units by putting restrictions. Look at the farmer, he guards his cultivated fields, protects them from stray cattle and wild animals, but after sowing the seeds, he does not unearth them every now and then to see whether they have sprouted. If, therefore, there is interference in even minor matters, that would make the Centre as well as the units weak. I have noted one thing, recently the U.P. Government decided and suggested the name 'Aryavarta' for itself. The people at the Centre felt that this name is absurd. I gave this instance of naming merely as an instance, if we adopt this name Aryavarta, then, how does it imply that rest of the country became non-Aryan ? Now, just see, Pakistan has named itself Pakistan (the land of the pure), does it mean India has become a land of the impure ? Is all the land other than Pakistan, a land of the impure ? Our leaders have by agreement accepted the name of Pakistan. Similarly Aryavarta could be adopted and that would not have rendered all other Provinces non-Aryavarta. This is only an instance, you did not like it, so we will change it, but if such things continue to happen, then where would liberty exist, where would local initiative exist ? Today our units should have the power of developing themselves, but would that exist in face of such interference ? In this way the units that you have created would also vanish. The Centre should therefore interfere with units to the minimum. In this connection I am naturally reminded of the English saying, viz. 'that Government is the best Government which governs the least'. This great saying is completely applicable to this matter, and points out that the Centre should not have extraordinary control. Safeguards and suggestions may be made by the Centre. There should not be interference at every step, so that the local initiative may be retained. I would invite your attention to this.

I appreciate Shri Shankar Rao Deo's views that the Indian Constitution does not seem to bear the Gandhian outlook. But I would tell him and other friends sharing this view that, whatever be the position, though Dr. Ambedkar might have previously made a fun of the Panchayats, yet they find a place in this Constitution. Village industries have also been given a place here, and there is also a mention of prohibition. Its greatness lies in the fact that the problem of untouchables has been solved and the general masses have been given the right of adult franchise, a right to vote. All these things are its great peculiarities and in view of them, we should take it, that the soul of the father of nation, Gandhiji, will be happy if this.

I would conclude after saying one more thing owing to which this Constitution is not dear to the Indian people. The people have to judge whether this Constitution is the necklace of jewels, or of artificial stones, of emeralds dug out from the mines, of diamonds of Golkunda or simply that of glass marbles. The language in which this Constitution has been framed is not the language of the people, the language of the people is that in which the poetry of Sur, and the great epic poetry of Tulsi was composed, in Northern India. Today my sister Durgabai cited a piece of verse from Telegu, which I could not commit to memory, but I would read it out, it is in Telugu :

मंदारन्मकांद-माधुर्यमना हेतु मधुयुग्म् पोअने मदनपुलेआ।
निर्मल मंदाकिनी वायिकल अग रामज्य चैनन कुरजयुतेका।

अम्बुजोदर दिव्य पादारविण्द चिन्तनायुत भर्तायत्त मेरीति।
नितरम्बु चेरनेत्सु विनुत गुणशील माठल वेइनेल?

I look at those words, if you too look at them, you would not find in Hindi of north or east any word which is so directly connected in its origin with Sanskrit as the words of this Telegu verse are. These are all Hindi words. Compare these Telugu songs with these couplets of Tulsi :

मानस सलिल सुधा प्रतिपालो।
जिर्यद की लवण पयोधि मरालो।
नव रसाल वन विहरणशीला।
सोइ कि कोकिल विपिन करीला॥

You would thus see how this language is spoken right from Himalayas to the Cape Comorin. Bandemataram is a song in simple Sanskrit and it has been our national song too. The famous song, namely,

वैष्णव जन तो तेणे कहिये,
जिन पीड पराई जाणिरे।

appears to be a Sanskrit verse and Gandhiji loved it more than his life. This Constitution has not been framed in the language universally current in the whole country. Sir, under your Presidentship, you were pleased to say that the Constitution of our nation would be in our language. Today the Constitution which this Constituent Assembly is adopting is not in our language. Shri Santhanam says that we should propagate this Constitution and carry it to the general masses. But how to carry it ?

Lord Buddha did not propagate his religion through Sanskrit. He had, adopted Pali language which was the language of the masses. When Gandhiji converted the Congress platform into public platform, he discarded English and began delivering his speeches in simple Hindi. The things can happen this way, only if the Constitution is adopted in our own language. Only a Constitution in our own language can reach the people; can become popular. It cannot become popular unless it is in people's language.

I would make one more submission and then take my seat. I hope the Hindi translation would be ready till the time this House reassembles for two or three days in January, and if we do not consider every article thereof, we can discuss it for two or three days at least and thus impress it with the authority of the House. Sir, you are the crown of this House. If the Constitution is authenticated by you, it would have the same authenticity. But if it is discussed and authenticated in the House, we would be able to go to the people and say that our great leaders, who relieved us from the centuries old bondage. who are the founders of our nation, have given us this treasure, which any people can secure by good luck only and which they have got after breaking the shackles of slavery.

With these words, I faithfully bow to you for affording me this opportunity to speak, which is a very significant moment in my political life, the most significant indeed of all the moments. After passing through the war of independence in 1920 and through many sufferings, this occasion of declaring our independence has arrived, and I have got this opportunity to speak on this occasion by your kindness. For this I am very grateful to you.

Shri Amiyo Kumar Ghosh (Bihar: General): Mr. President, Sir, at the very outset, I offer my grateful, thanks to you for conducting the deliberations of

[Shri Amiyo Kumar Ghosh]

this House with dignity, justice and patience. I also thank the members of the Drafting Committee for the great work done by them.

Sir, there is no such thing as unmixed good. Everything has got its merits, and demerits, and this Constitution of ours is no exception to it. I personally feel that the present Constitution has ignored time and history and has followed the old the track which was despised and criticised by us in the past. The reason is obvious, this Constitution of ours is not a creation of our own. It is a borrowed thing. It has been borrowed from several constitutions of the world. If we had shut our eyes to other Constitutions, sat together and decided what should be our economic structure, what should be our rights, and what type of Government we should have and put our decision in our own words, then perhaps we could have produced a much better constitution than what we are discussing today. Another misfortune is that this Constitution has been framed not from people's point of view but from the Government's view point, and so lacks in revolutionary fervour. It is said that the country is faced with various troubles, problem and difficulties now and during such times, it is not proper to have a liberal constitution. But I submit that constitutions are always framed in abnormal times and circumstances and so it is no answer.

The first thing that I like to say is that this Constitution of ours is a voluminous document. We have incorporated in it so many minor matters and have gone into so many details which are no part of a constitution proper. The reason is probably, that the many responsible for this Constitution, and the members of the Drafting Committee could not place faith or trust in the future Parliament. The Constitution should have only laid down our rights, and privileges, our economic structure and the type of Government wanted and the rest should have been left to the future Parliament to do according to the needs and demands of the country. But, Sir, here we have given no such scope to the future Parliament. Things which ought to have been left fluid and flexible have been made rigid by putting them in the Constitution. This Constitution lacks flexibility which itself is a great defect in my opinion.

If we examine the Constitution critically, the unitary nature of the Constitution becomes patent. We have given a good-bye to the Panchayat system. So much so, that in the name of co-ordination and better administration, we have reduced the States to the position of merely order carriers. All finances, all powers are with the Centre. The States have been so much impoverished in the matter of finance, that it will become difficult for the States to carry on the administration and discharge its various obligations. The result of this centralisation would be that either the Centre will crash under its own weight or there will be constant friction between the Union and the States, endangering the whole structure of the Constitution. I hope that this position should be revised soon and more powers and finances would be placed at the disposal of the States. In this Constitution, no definite financial aid to the States has been guaranteed. The only power of taxation which the States had namely the Sales Tax, has also been restricted to a great extent. The distribution of the subsidy from the Income Tax has been very unfair hitherto. The great inequality in the distribution of Income-tax subsidy should be revised early and brought on a fair level. So far as the finances of the provinces are concerned, I would like to draw the attention of this House that the financial position, of Bihar is not very satisfactory and with implementation of prohibition the Province may collapse financially. Hitherto, Bihar had not got its proper quota from the Income-tax income. I therefore stress that this position has to be revised as quickly as possible and in deciding the quota of such subsidies, it must be seen that the province gets its full share in the Income-tax income levied on profit earned from the products of that province.

Now, Sir, coming to the articles dealing with Fundamental Rights, personal liberty and acquisition of property, I feel they are very disappointing. So far as fundamental rights and liberties are concerned, the restrictions are more prominent than the actual liberty and freedom. As a matter of fact freedom and liberties are lost in the restrictions. Enough power has been given to the executive to detain any person whenever it likes and there is every chance of this power being widely misused. I wish that these article should soon be revised by the future Parliament specially the provisions dealing with personal liberty and "due process of law" will find its proper place in the Constitution. So far as acquisition of property is concerned, my feeling is that the Union and the States should have been given wider powers to acquire property. The question of payment or non-payment of compensation should have been left to be determined by the future Parliament according to the needs and demands of the time. That was the proper thing. The present article 31 has debarred the, States or the Union at all times from acquiring any property without paying compensation. I do not know what view the Supreme Court will take regarding this article but the fact remains that this Article is charged with clumsiness. My honest view is that this Article will act as a great impediment towards our social progress, and national development.

Then, Sir, in this Constitution, we have not separated the Executive from the Judiciary. We have included that in the Directive Principles. I think the proper place for that was in this very Constitution. The demand of separation of Judiciary from the Executive was all along agitated by the Congress and people, but it is unfortunate that this important issue has been side-tracked by including it in the chapter of Directives.

Then, another matter to which I would like to draw the attention of this House is the wide emergency powers given, to the President. Virtually the President may set himself a dictator by exercising these emergency powers and deprive the people from the benefit of a democratic Government. I submit that this may bring disaster to the country, I hope that the emergency powers win never be taken recourse to in spite of the fact that it has been put in the Constitution. Except in cases of grave national danger and a convention to that effect should be established.

Sir, there are also very good articles in the Constitution and some of them require special mention. The removal of untouchability has removed a strong barrier to our social and economic progress and I think the future Government will try to implement this with a strong hand. Abolition of separate electorates which has brought so many miseries to the country is another redeeming feature of this Constitution. Adult franchise is another bold step in our Constitution; but it is not free from danger. We know that our country is not so educated as to understand the real implications of adult franchise. Now, the responsibility is with us to go to the people and tell them the real implications of this right so that this right may not be misused, and the people may not be misguided.

Then, Sir, the integration of the States within this Union and giving them a place in this Constitution is another remarkable performance for which all credit is due to our revered Deputy Prime Minister.

Sir, in the end, I would like again to impress this House regarding financial position of the province of Bihar. I have already stated and I repeat, it that if the Province is not given its proper share of subsidy from Income-tax, and other subsidies the financial position of the Province may become precarious and the Province may not be able to march towards its progress.

[Shri Amiyo Kumar Ghosh]

In conclusion I must say that it is a momentous achievement and in spite of its defects and short short comings its colossal nature cannot be denied. I wish the document a happy sail.

With them words, I thank you, Sir, for giving me this opportunity to express my views in short.

Mr. President : The House stands adjourned to 10 o'clock tomorrow morning.

The Assembly then adjourned till Ten of the Clock on Tuesday, the 22nd November, 1949.

CONSTITUENT ASSEMBLY OF INDIA

Tuesday, the 22nd November, 1949

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.

DRAFT CONSTITUTION—(Contd.)

Shri H. V. Kamath (C.P. & Berar: General): Mr. President, a few days ago you were good enough to tell the House that the election of Members from Vindhya Pradesh to the Constituent Assembly would take place about the 20th of this month. Will you kindly tell us whether the election has taken place and whether the Members will take their seats here during this session ?

Mr. President : Well I am expecting them to come; but it is not by way of election. As I informed the House the other day, an attempt has been made to constitute an electoral college, but for some reason or other, that has not been found possible. So ultimately I was asked to agree to nomination, and I did. So I am expecting the nominated Members to come.

Shri Jainarain Vyas (United State of Rajasthan) : I understand that two Members have already come here.

Mr. President : It they have come, they will come here.

Shri Jainarain Vyas : But they have not got the credentials from the Raj Pramukh and that is why they are waiting.

Shri H. J. Khandekar (C.P. & Berar: General) : I read in yesterday's paper that four persons have been nominated by you to this House from the Vindhya Pradesh.

Mr. President : No, not by me.

Shri H. J. Khandekar : No, I am sorry by the Rajpramukh. May I know on a point of information whether there is a Harijan among them ?

Mr. President : Well, the names that we have received are these, and I do not know if any of them is a Harijan or not. The names are:

- (1) Captain Awadhesh Pratap Singh,
- (2) Shri Shambhunath Shukla,
- (3) Pandit Ram Sahai Tewari, and
- (4) Shri Mannulalji Dwivedi.

No, I do not think there is any Harijan there.

Shri H. J. Khandekar : From the sur-names also I can make out that there is no Harijan.

Shri H. V. Kamath : Is any attempt being made, or will any attempt be made, to get the Hyderabad State into the Constituent Assembly by the next session ?

Mr. President : I do not know. I cannot make any attempt so long as Hyderabad does not accede to India and agree to send its representatives to this Assembly.

Shri H. V. Kamath : There was a rumour in the Press that Hyderabad was shortly going to accede.

Mr. President : I have no information.

May I suggest to honourable Members to confine themselves to ten minutes each, because there is a very large number of speakers and many of the points have already been covered by one speaker or the other. So, the speeches now will be more or less a repetition. I would, therefore, suggest to honourable Members to confine their remarks to ten minutes, if possible.

Begum Aizaz Rasul (United Provinces: Muslim) : Mr. President, Sir, this is indeed a very solemn and auspicious occasion that this Constituent Assembly has finished its mighty task of drafting a Constitution for free India—a Constitution which embodies in itself the hopes and aspirations of the Indian people. If a constitution can be judged by its phraseology, or by the provisions it contains, then, certainly, our Constitution deserves a very high place in the constitutions of the world and I think we are justified in feeling proud of it. I would like to congratulate Dr. Ambedkar and members of the Drafting Committee on their wonderful work and to thank you, Mr. President, for the patient and efficient manner in which you have conducted the proceedings of this House. The Secretariat staff of the Constituent Assembly also deserve our thanks for their hard work and incessant labours.

Sir, the most outstanding feature of the Constitution is the fact that India is to be a purely secular State. The sanctity of the Constitution lies essentially in its affirmation of secularity and we are proud of it. I have full faith that this secularity will always be kept guarded and unsullied, as upon it depends that complete unity of the peoples of India without which all hopes of progress would be in vain.

Then, Sir, being a Democratic Republic, the Constitution provides for all citizens, individually and collectively, the best fruits of democracy and ensures to them those basic conditions and freedoms which alone make life secure, significant and productive. Even though these Fundamental Rights are hedged in by various conditions and provisos, yet to my mind, Sir, they guarantee to the citizen that measure of liberty which is necessary for a free and full development of his total personality. These are also justiciable which is an essential corollary to the theory of Fundamental Rights which are incorporated in a constitution to ensure the principle that man has certain rights independently of the Government under which he lives and a court of justice is there to see that these rights are not infringed by any of the governmental bodies—the Legislature or the Executive.

Articles 14 to 28 ensure to the individual social, economic and political equality, irrespective of caste, creed or sex, religious freedom and equality of opportunity. Articles 29 and 30 ensure to the minorities the preservation of their language, script and culture. I hope, that article 29 will be so applied as to be effective, and primary education of children will be imparted in their mother tongue wherever such demand is reasonably made.

But, Sir, I regret to say that article 31 relating to the right of property has been very unfairly and unjustly embodied in the Constitution. Like, builders of cities, the makers of the Constitution frame a constitution for all times, embodying principles of universal applicability. The Constitution should not favour one party or one group or one province. It is regrettable that the provisions of article 31 do not pass this test and have been made to facilitate party programme in some provinces. It discriminates against *zamindari* abolition Provinces other than the U.P., Bihar and Madras, and also discriminates between agricultural and industrial property. It takes, away the rights of justiciability from agricultural property in these provinces. This is a strange provision and makes an ugly blot on an otherwise beautiful picture.

Sir, the introduction of adult franchise in the country means a great step forward, but with the large masses of uneducated people this system would only succeed if effective measures are taken immediately to educate the people of India for citizenship.

Sir, the women of India are happy to step into their rightful heritage of complete equality with men in all spheres of life and activity. I say so because I am convinced that this is no new concept which has been postulated for the purposes of this Constitution, but is an ideal that has long been cherished by India, though social conditions for some time had tragically debased it in practice. This Constitution affirms that ideal and gives the solemn assurance that the rights of women in law will be wholly honoured in the Indian Republic.

Then, Sir, one of the most important and historic features of the Constitution is the abolition of reservation of seats for minorities. I am in the happy position to remind the House that right from the very beginning I have consistently supported the thesis for the abolition of these seats, as I made clear in my speech at the time of the First Reading of this Constitution. The part that I have played in the removal of these reservations and which I did with the greatest sense of responsibility was inspired by the conviction that it was absolutely suicidal for a religious minority to keep alive the spirit of separatism by demanding reservation on communal lines. As a matter of fact nothing can protect a minority or group less than a barrier that divides it from the majority. It makes it a permanently isolated group and prevents it from moving closer to the other groups in the country. I hope that by doing away with reservations we have also swept away those difficulties and misunderstandings which so unfortunately marred our public and political life in the past few years. I look forward, Sir, to the day when individuals will cease to regard themselves as members of religious minorities. But this, Mr. President, can only be done if and when the majority also cease to be conscious of their majority and members of all communities, big or small, sincerely and simultaneously begin to consider themselves and one another as full and equal citizens of a Secular State.

Another interesting aspect of our Constitution is the fact that it is now applicable to the whole of India, including the erstwhile Indian States. This has been made possible by the remarkable genius of Sardar Vallabhbhai Patel who has achieved in a miraculously short period of time, in a completely non-violent manner, the unification of our country in spite of the intransigence and obduracy of such States as Hyderabad and Bhopal. We look forward to welcoming very shortly in our midst the chosen representatives of Hyderabad.

May I say, Sir, what a thrill of pride we felt on reading that the Prime Minister had referred to and quoted from the Constitution of India when he addressed the Parliament of the mightiest democracy of the modern world. By this gesture of his we feel that the seal of authenticity has been placed on the democratic nature of our Constitution, Sir, a constitution is judged by the spirit in which it is worked: it is judged by the manner and method of its implementation. Then, again, the ultimate aim of all constitutions is to increase human happiness, human well-being and weld together the various elements in a country into one nation. Ours is a great country with a great destiny stretching before her. I hope and pray that the implementation of this Constitution will be such as to enhance the prestige of our motherland and make her a dynamic force that will bring together all nations of the world within the orbit of an enduring peace. Sir, I support Dr. Ambedkar's motion.

Dr. P. S. Deshmukh (C. P. & Berar: General): Mr. President, at the very outset I would like to endorse all that has been said in praise of you and the

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tributes paid to you. I refer especially to the tributes paid by Mr. Maitra, Mr. Naziruddin Ahmad and Pandit Thakar Das Bhargava. I do not propose to spend more time in offering congratulations to various Members of this House who have taken such keen part and have spent all their intelligence.....

An Honourable Member : All their intelligence ?

Dr. P. S. Deshmukh : Not all, but so much of their intelligence and have worked so hard in seeing that the Constitution was framed as far as possible to their own satisfaction.

In this Constitution we have decided to have a parliamentary democracy. It is a parliamentary democracy modelled on the British constitution and although we have not parliamentary sovereignty and although we have decided to encroach on the sovereignty of our Parliament in various ways by incorporating Fundamental Rights and many other matters of like nature, including decisions as to what salary shall be paid to such and such individual, etc. We have gone on the model of the British constitution more than the American constitution. So far as similarity between ours and the American constitution is concerned it is more in the form or the nomenclature than in the essential powers that we have conferred on the various office-bearers or dignitaries in the Constitution.

One great merit of this Constitution I consider is that the people of this country are not going to have a Constitution very much different from what they are familiar with during the last ten or twelve years. With the exception of responsibility at the Centre it is essentially the Act of 1935. I do not mean this, for the moment at any rate, as a sort of condemnation. I am prepared to regard it as a merit and not a demerit, because the people will not have much difficulty in understanding the Constitution. The Governors are there, the name of the Governor-General has been altered to the 'President, but essentially the whole superstructure of the constitution of 1935 remains intact. There is one important change which will bring about, I hope, a radical change in the social and political status and composition of the people in the country and that is adult franchise. Excepting for this there is very little in the Constitution to enthuse over. But that, namely adult franchise, is one factor which I think will make a tremendous difference to the nature of representation in the various legislative bodies. Although the superstructure will remain the same I have no doubt that the underdog or the common man in India will have greater power in his hands and he will be able to wield it to the benefit of the whole country. I look at the Constitution from two distinct points of view and I consider it unsatisfactory from those points of view. Firstly, if we look at it from the point of view of building a strong nation we have certainly discountenanced many binding forces which should have been useful and which are useful to all societies and all nations : I mean for instance the binding force of religion. At the present day I do not think in the whole world there is any other country which is so definitely irreligious as India is and on the excuse or on the fundamental principle of making our Constitution secular we have seen to it that there is not even a shadow of our religion reflected in our Constitution. I am not a very religious man myself but I think religion has and can certainly have a definite place in the life of every society and in the administrations of many States. I would not have minded if we had given some place to the noblest religion on earth, namely the Hindu religion, and even if we wanted that the Constitution should remain secular, even if we had declared that this shall be a Hindu State, I have not the slightest doubt that the Constitution would have remained as secular as we wanted it to be, because there is

no religion on earth which is more secular in character than Hinduism, (*Hear, hear*) I for one would have utilised, especially in a country like ours, the religion of India which our forefathers and ancestors have left us for the further unification and building up of the future Indian nation.

There is also another point of view from which I find the Constitution defective. This parliamentary democracy is essentially meant for maintaining the *status quo*. It is not meant to bring about a radical change from the existing state of affairs. We are going to keep the various institutions intact. We want to keep the various layers of society where they were and from that point of view I would not be surprised if this Constitution does not last long, because it does not answer the aspirations of the man in the street at the present time. We have praised, many of my honourable Friends have extolled, the principles of equality, liberty and fraternity. Sir, after a period of more than two hundred years, I think most of these very high sounding words have lost their significance. Under these phrases it has been possible for various countries to maintain the upper layers where they were and to exploit the lower ranks to their hearts' content. And I think that if the present Constitution is worked in the right spirit, if the adult franchise makes a difference and we get the right people from the common and average men as their representatives, then alone will it be possible for the people to receive that benefit which they are aspirin for. Otherwise, what was good after the French revolution cannot be good in the year 1949 and there will have to be some sort of a rebellion or a revolution in order that the superstructure should not remain as it is perpetually and the proletariat coming into its own will have the powers of authority and the well-being of the country in their own hands.

From that point of view, Sir, having a parliamentary democracy is not answering the requirements of the present age. Unless the adult franchise itself is going to make a difference, unless the vested interests which will try to maintain the *status quo* find themselves powerless to maintain their own present, hold under the altered circumstances of the future, then alone is this Constitution likely to work, Otherwise the Constitution required under the present age is entirely different, at least as different as Mahatmaji himself wanted it. After all, we have worked this very Constitution during the last three years and it is quite easy to see from this experience that there is not going to be much material difference between the way in which we have administered the country for the last three years and what we may do hereafter. And if we look back at it we will find that we have not been able to answer or to satisfy the aspirations of the people. It is no exaggeration to say that there is, however imperceptible, a conflict arising between the Government on the one hand and the people on the other. it is no use consoling ourselves by saying that the discontent is not able to focus its attention or to organise itself in one single party so as to damage the administration of the present day. But that may very easily come about because the signs and the seeds are there. The people are thinking that this is not our administration because they have got so many grievances, so many items of discontent. So, from that point of view I am doubtful whether this Constitution really answers or satisfies either the genius of the Indian people or the requirements of the present age.

Sir, apart from that we have undoubtedly achieved very many things for which we ourselves deserve congratulations and the person who deserves the highest congratulation is the Iron man of India, Sardar Vallabhbbai Patel. It was he who brought about homogeneity in the sub-continent of India by liquidation of all the States. Then, the minorities and the various other impediments in the working of a proper democracy have also been removed largely

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by his wisdom, by his prudence and by his tactful handling than that of anybody else. So, from that point of view we have achieved a great deal. In giving adult franchise, in abolishing all special interests and representations, in abolishing the States and in also liquidating many of the vested interests, we have certainly advanced a great deal. But in discouraging or denouncing certain of the vested interests we have also strengthened some others. In times to come it must be our endeavour to see that these vested interests also do not remain as impregnable fortresses of conservatism and old-age philosophies and in that connection I would certainly like to express that the people of India should cultivate a sort of respect for this Constitution. If and when they find it wanting, it may then be time for them to change it. But there is no doubt that we have done our best to incorporate the essentials of a democratic Government in it.

Some people have objected that the President has been given too much power. I too agree that in some cases the President's powers are extensive but really speaking these are not the President's powers, they are the powers of the executive and the Prime Minister. I do not think the President will be able to act in any other way except as a constitutional monarch. He will have no initiative, he will have very little power to act arbitrarily; it is the Central Government which is clothed with more executive power. Sir, I had proposed that we should have a unitary form of government, but I have the satisfaction that although we have not incorporated a full-fledged and full-blooded unitary form of government, our Constitution is more unitary than federal and from that point of view I think it is a much greater improvement from the time we set about this task.

I have one or two complaints to make, but I do not think this is the opportunity when we should resort to any fault-finding. It is enough to say that the people who are known as the backward communities of India, have not been treated as fairly as I would have liked them to be. There would have been no harm if my suggestion in this respect were accepted, but if it was not found acceptable for incorporation in the Constitution. I hope the sympathetic attitude which many people have towards them will be reflected in the legislation that we may pass hereafter or the policies we may pursue. After all, the whole of India is economically and educationally backward. There are only very insignificant proportions of our people who have got either the wealth or the education or the various good things in life. The generality of the people are destitute, are ill-fed, their health is very little cared for. Therefore, the handicaps and the sufferings of the people like the Scheduled Castes and Scheduled Tribes are also, in a large measure, shared by vast communities which are in the Hindu fold itself. That being so, I would say that it would be very desirable that the sympathy which we show towards the Scheduled Castes and Scheduled Tribes should also, in a measure, be extended to these people who have yet to see any benefits accruing from the freedom that we have achieved, and the more sympathy we show, the better will it be for the homogeneity of the Indian society.

Sir, I again thank you for the latitude you gave us from time to time and the way in which you have conducted the proceedings of this House. It has given immense pleasure and every satisfaction to every Member of the House and I for one would like to pay you this tribute once over again.

Shri Sita Ram S. Jajoo (Madhya Bharat) : Mr. President, Sir, it is a matter of great pride that I stand here to support the motion of the Honourable Dr. Ambedkar. I have no desire of entering into the history of the idea of the

Constituent Assembly but so far as I am concerned, as a representative from an Indian State, I feel gratified at the development and evolution of the association of the Indian States people in the present Constituent Assembly. We the people in the Indian States, under the Presidentship of the present Prime Minister of India, the Honourable Pandit Jawaharlal Nehru, and later on Dr. Pattabhi Sitaramayya and Sheikh Abdullah, have tried and agitated for the association of the, Indian States people with the Indian Union. We have wanted that there should be no distinction of any kind between the representative of the people of Indian States and those of the then British India. We thought that racially, culturally, ethnologically and in every other respect we were the same people, we were the same race and we had all common interests with the, rest of the country. Fortunately for us, Mahatma Gandhi, Father of our Nation and other national leaders realised it and with their blessings we achieved success and marched from one milestone to another and ultimately we have been associated in this Assembly under your very able guidance. Mr. President, Sir, you started the negotiations with the Princes which ultimately resulted in that there are now only a few handful of people who were their nominees and that the rest are all the elected representatives of the Indian people. As a matter of fact we feel that by a single stroke of the pen we have wiped off the history of 200 or more years during which period the foreign Government created various interests here with a view to perpetuating their imperialistic interests and their strangle hold on this country.

Sir, in this Constitution as regards the chapter on Indian States we felt that the control of the Centre over the Indian States was wrong; I was strongly of the opinion that such control was an insult to the people of the Indian States. With that view I with other friends of mine particularly Shri Balwant Singh Mehta, brought that matter to the notice of the Drafting Committee, its Chairman, Dr. Ambedkar, Shri T. T. Krishnamachari and others. It was very kind of them that they did hear us and told us that the circumstances in the Indian States were such that they could not take any different attitude. We reluctantly agreed with them, but still believed that there was no necessity of making this distinction in the Constitution. Later on we heard and we see it provided in the Constitution that the provinces also get the same treatment. That is a consolation for us, as the proverb goes 'that misery still delights in its resemblance with another's case'. But still we feel that we should not be treated like that.

Sir, there has been a change since the Partition in the political ideology of the country from provincial autonomy to the strengthening of the Centre and the desire to grab as much power to the Centre as possible is there. I am not going to criticise this change in the ideology, because that is perhaps the view of our leaders. They want to strengthen the country. After the Partition, other things have also developed. Those developments are not our own creation. We feel, however, that on the whole whatever has been done in the States is a grand achievement and further we have the assurance given by the Deputy Prime Minister who is also Minister for the States that there will be least interference with the administration of the States. I hope we will not be treated like Harijans.

Our greatest achievement is that the people in the States who were being treated as sub-humans with no civil rights or civil liberties are now granted these rights and have been brought on par with the rest of the people residing in this country. The old system has been obliterated and the systems of forced labour and other inhuman customs are not be perpetuated any more. But it remains to be seen how far we will succeed in implementing the provisions in the Constitution. I have no doubt that under the able guidance of our Prime Minister and the Deputy Prime Minister we will see that our aspirations are fulfilled fully well.

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Another thing we have achieved, concerns the minorities. Separate electorates had been the cause of discontent in the country and also the cause of Partition of the country. We have now wiped them off. But there is one thing about which I would like to warn my co-religionists who are in a majority here. We have done away with reservation of seats and separate electorates except in the case of Harijans and that too only for 10 years. Now we have to remember that the treatment we not out to the minorities during the next ten years and the goodwill we show them should be such that at the end of this period we should be able to wipe off the reservations for the Scheduled Castes also. If we fail in this respect in this test, our failure will remain to our lasting discredit. We have to prove by our action that we are men of goodwill. This is the time for action. No provision in the Constitution will be equal to that. Not professions but actions are needed, and I hope we shall not fail.

Another point I wish to dwell upon relates to the financial integration of our country. I feel that by having financial integration we are strengthening the Centre. But we have to see that the Indian States which contribute much to your coffers are treated fairly. You are taking many things from them and their income from the railways and other sources. You should see that they do not become financial wrecks. In Madhya Bharat and other States particularly in Rajasthan, you have taken Bikaner, Jodhpur and Udaipur railways. In case they do not get a fair help and subsidy from the Centre, financially they will be only wrecks. You have to see that they get a fair chance to govern and manage their affairs well.

Administratively we have been hearing from our administrators that the Indian States people have been dubbed incompetent. I refute such statements about the Indian States. There are probably more glaring cases of maladministration in the provinces. We all know what is happening in certain provinces now. If everybody says that the Indian States are not sufficiently advanced for handing over power, I ask what has been happening in Madras Province, in West Bengal and in the East Punjab?

Shri L. Krishnaswami Bharati (Madras: General) : What do you know of Madras ?

Shri Sita Ram S. Jajoo : If I do not know anything about Madras, I challenge those who come from the Provinces to say what they know of Indian States. There is no reason why you should dub the hundreds of Indian States as backward. We may be backward and yet we may get representation here. But there is one thing you should remember. We are human beings with the same aspirations and ambitions as others. We have all been slaves with you and fortunately for all of us we have been redeemed from that slavery. Thanks to Bapu. I do not see how you are superior to us. I will never concede that. So far as the administration is concerned, as it is under the able guidance of the Deputy Prime Minister, all the administrative services have been integrated and we feel we should have a fair chance and representation. One request of mine in this connection is that the people of the Indian State should not be given the cold shoulder.

Another thing is that people have been saying 'I am not going to defend this Constitution. There are more competent gentlemen like Dr. Ambedkar and Shri T. T. Krishnamachari for that'. I do not agree with them. They say, that this Constitution does not go far enough. I do not agree with them also. This Constitution according to me, is suited to Indian conditions. I do not think in the present circumstances anybody could improve it. Everywhere we find that all man-made things are faulty and there is always room for

improvement. And in the present circumstances we could not make a better Constitution than this. But I am confident that had the Father of the Nation been alive today he would have certainly approved of it, though he might have not entirely agreed with it. There are provisions in the Constitution which show that we have wholeheartedly followed the Gandhian philosophy. The Constitution contains the seeds of all that Gandhiji had taught us and these seeds would flower if the Constitution is worked properly.

Under the Constitution we have drawn up we can fulfil all our election manifestoes and promises to the electorate provided we work it in the spirit in which it is conceived. It is not the letter of the law or the articles that we should look to for guidance. We should be guided by the spirit in which we have framed the Constitution. As for example, Sir, though it is not provided in the Constitution we have the assurance of our Prime Minister that so long as he is Prime Minister salt tax is not going to be reimposed in the country.

Another change is that this is a voluminous Constitution, for that I have to draw your attention to the fact that there are certain things which, if you leave provisions relating to them as you find them in the Constitution, the result will be jugglery of the lawyers and the judiciary will interpret many of them in such a way that the people will be the sufferers.

Sir, now I will refer to the question of property rights. It is provided in this Constitution, Sir, that the *zamindaris*, will be abolished only in provinces where Bills to that effect are introduced before the 26th January, 1950. This abolition should come into force throughout India on a uniform basis. Everywhere *zamindaris* should be abolished by the 26th January next. In the Republic of India there should be no vestige left of the *zamindaris* or other feudal or vested interests. The opportunity is there and we have full faith in our leaders Pandit Nehru and Sardar Patel that they will achieve this and lead the country forward taking one milestone after another. Our ambition to make a Constitution for ourselves has been fulfilled. Here we have ended one part of our journey to take up the greater task of fulfilling and implementing the aspirations underlying this Constitution. Now it has to be judged how we are going to put it into practice and fulfil our promises to the electorates. We who have been swearing in the name of Mahatma Gandhi on every available opportunity have to show in actual practice that our actions will not be inconsistent with his principles. Particularly on Congressmen falls the duty of seeing that we are true to the Mahatma's ideals and do not fall victims to communalists or vested interests.

We should take a practical view of the whole thing and see to it that people are not victimised by vested interests. We have to see that we got out of the clutches of the vested interests. We approve of the Constitution as worthy of the objectives and worthy of the (Objectives) Resolution that we have passed here. With these words, Sir, I support the motion which has been moved by the Honourable Dr. B. R. Ambedkar.

Mr. President : Pandit Hirday Nath Kunzru.

Shri Lokanath Misra (Orissa : General) : I hope, those who gave their names on the first day will have their chance.

Mr. President : I am not calling the names in the order in which they came.

Shri Lokanath Misra : None the less, I hope those who gave their names ought to have their chance.

Mr. President : Of course they will have.

Pandit Hirday Nath Kunzru (United Provinces: General) : Mr. President, no one who considers the Constitution as a whole can but approach it with

[Pandit Hirday Nath Kunzru]

a full sense of responsibility. It may not be what everyone of us would have desired it to be but I think that the wholesale condemnation of what is contained in it, which has been indulged in by some people here and outside is out of place. In this connection, Sir, we must all in fairness pay a tribute to the Drafting Committee for the efficiency and thoroughness with which it dealt with its task. Its members have had to work hard individually and collectively, and while it is impossible for anyone to say that all their recommendations are of such a character as to win the approval of all Sections of the House, it must be admitted that they approached their duties, in so far as they were free to give effect to their wishes, with a desire to enlarge the bounds of freedom. In this connection, Sir, I should like to pay a tribute to the officers and staff of the Constituent Assembly whose duty it was to help the Drafting Committee in placing its recommendations before the House and honourable Members in obtaining, information and understanding the various provisions of the Constitution. Perhaps I have proved more troublesome to them than any other Member of this House.

Shri H. V. Kamath (C. P. & Berar: General) : There are some others also.

Pandit Hirday Nath Kunzru : I should therefore like on this occasion to pay my acknowledgments for not merely their efficiency but the splendid spirit in which they worked. I do not think that anything can exceed their sense of duty or their enthusiasm for the work with which they were concerned.

Shri T. T. Krishnamachari (Madras: General): Hear, hear.

Pandit Hirday Nath Kunzru : I sincerely think we should place our sense of gratitude to them on record.

Sir, there are many points of view from which we can look at the Constitution but I think that the more distinctive features of the Constitution are those that relate to individual liberty and the relations that will prevail in future between the Centre and the component units. The main article dealing with the first point is article 22. I recognise that that article places certain restrictions on the power of the provincial Governments and the Central Government that did not exist before. For instance, under the Public Safety Acts, many provincial governments had accepted the responsibility of supplying information to the detenus with regard to the charges on which they had been detained only if they were asked for it. Again, it has been found in several cases that there was undue delay in supplying the information. Another defective feature of the provincial Public Safety Acts was that they did not provide for the reference of the cases of detenus to an Advisory Board, so that even if no judicial examination of the charges was possible the public might feel that some impartial body had considered the charges and judged whether the detention was justifiable or not. Under article 22 the case of every detenu will go before an Advisory Board composed of persons who have been Judges of a High Court or are qualified to be appointed as Judges. Again Sir, the Government concerned will be under an obligation to inform the detenus as soon as possible of the grounds for their arrest and detention. It is further provided that no man unless he has been detained in accordance with the law passed by Parliament shall be kept in detention for a longer period than that prescribed by Parliament by law. Article 22, therefore, removes, some of the defects that existed formerly. Nevertheless our experience of the existing restrictive laws shows that scope is so narrow that it cannot deal with some of the difficulties that have arisen in various provinces

Sir, although the Public Safety Acts have given full power to the Provincial Governments to detain persons who in their opinion have committed or are about to commit acts prejudicial to the public safety, nevertheless the High Courts had intervened in some cases and ordered the release of detenus on the ground that the charges against them were vague, indefinite or incomplete and did not contain sufficient information to enable them to make the representations contemplated by the Acts. Some of the Governments following the lead of the Central Provinces Government amended their laws so as to prevent the High Courts from releasing anybody on these grounds. The Madras Government has recently amended its law in this sense and the Minister of Law stated in the Madras Assembly that the change had been introduced at the instance of the Government of India. Dr. Ambedkar has placed before us an article that would impose restrictions on the powers of the Provincial Governments, but his Government, possibly his own Ministry, has advised the Provincial Governments to choose an indirect way of ousting the jurisdiction of the High Courts.

Another illustration will also show how narrow the scope of article 22 is. In a case that came before the Central Provinces High Court a few months ago the High Court found that the charges were groundless. The facts and the evidence placed before it by the detenu concerned showed that there was no ground for the apprehension entertained by the Provincial Government and that the facts mentioned by it and the grounds for arrest communicated by it to the detenu had no basis in fact. I suppose that the Central Provinces Government communicated definite charges to the detenu because it feared that the High Court might otherwise hold that the detention was not justified, but article 22, as placed before us and as passed by the Assembly, would afford scarcely any relief in such a case. Neither the Central Government nor the Provincial Governments would be under an obligation to communicate definite charges to the detenus and consequently the High Courts would be unable to exercise even the little supervision that they have so far been able to do.

Sir, there is one other feature of the Constitution

Shri T. T. Krishnamachari. May I, point out to my honourable Friend that clause (1) of article 22 might probably cover the case he has in mind?

Pandit Hirday Nath Kunzru : Clause (1) of article 22 does not relate to cases of persons who are detained under any preventive law. I am speaking of persons arrested under the Public Safety Acts and not of people arrested under the ordinary law. I do not, therefore, think that clause (1) of article 22 will apply to the cases of persons to whom I have been referring.

Sir, there is one other feature of the Constitution that I should like to refer to in this connection. The administration of a law is a matter of no less importance than its provisions. It is necessary, therefore that the position of the judiciary should be strengthened and that every step should be taken to devise a machinery that would ensure that impartial justice was meted out to everybody, but I fear that the Constitution will not promote what is necessary for this purpose, viz., the separation of the Judiciary from the Executive. The form in which the recommendation on this subject was placed before us required that this reform should be carried out in three years, but the reference to this period was deleted when the recommendation was discussed by the House. Consequently the recommendation is only of a general character now. I know that in Madras at least the scheme for the separation of the Judiciary from the Executive has been put into effect in one or two districts and that in one or two other provinces schemes for carrying out this

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purpose are under consideration. But, the Constitution as it is, does not enable us to exercise any pressure on the provincial Governments to effect this reform as speedily as possible.

Again, take the position of the High Courts. It will be more than ever necessary in the future that the highest legal talent should be attracted to the High Courts and that they should enjoy a high degree of prestige I fear, however, Sir, that the provisions relating to the salaries and pensions of the Judges taken in conjunction with the prohibition of private practice will not induce men with the highest legal qualifications to take up Judgeships in the High Courts. It is still open to us to revise the law regarding the payment of pensions to the High Court Judges so that there may be at least one law that would induce really able men to accept Judgeships. I do not want to go into the details of this subject; but in my opinion, what is necessary is that the pension of a Judge taken from the Bar should not depend on the length of his service and that the pension given to such a Judge and perhaps even to other Judges should be as high as it is, for instance in England. At the present time, the Judges in India may at the outside get one-third of their salary as pension on their retirement. I think that the pension should in the future not be less than two-thirds of the salary.

Another way of strengthening the prestige of the High Courts and of creating confidence in the minds of the public in the efficiency and purity of judicial administration, would be to allow the High Courts to appoint and transfer District Judges. It was at first contemplated that our Constitution should confer such an authority on the High Court. But, unfortunately, the article that was placed before the House was revised so as to take away this power from them. This is a weakness of our Constitution which is deeply to be regretted. All these features taken together show that the Drafting Committee and perhaps the Central Government have not realised the importance of the provisions relating to the future judicial administration of the country.

Now, Sir, I shall deal only with one more point before I sit down. In judging the character of the provisions relating to the distribution of powers between the Centre and the Provinces, I shall not be guided by any theory. There is no uniform definition of federalism. Federal constitutions are of various kinds. What we have to see is whether the relations that would prevail between the Centre and the component units will be such as to promote the growth of democracy and a due sense of responsibility among the provincial Governments. The experience of federal Governments in various parts of the world has shown that it is necessary to endow the Central Government with the power to deal with certain important matters which certain Constitutions have placed within the jurisdiction of the component units. Experience has also shown that it is desirable in view of the conditions prevailing now that the Central Government should have considerable power in the economic sphere, so as to be in a position to raise the standard of living of the masses and to bring about an increase in the production of wealth in the country. We know how important the economic factor has proved to be in various countries. The power conferred on the Union Government by this Constitution in regard to economic matters is then at once to be welcomed.

Again, it is a welcome feature of the Constitution that the Central Government will be in a position to implement the treaties to which it is a party, or any conventions that it has agreed to. In my opinion and in the opinion of Indians in general, it was a serious defect in the Government of India Act, 1935 that the Central Government did not possess this power.

Again. Sir, it is necessary that the Central Government which is responsible for the security of the country should be able to intervene effectively when the national security is threatened by external or internal causes. But there are certain powers given to the Central Government that in my opinion are not required either by experience in other countries or by the developments that have taken place in the world since the end of the last war.

Sir, the provisions that I have in view are those relating to the annulment of the financial relations between the Centre and the constituent units in an emergency and the control to be exercised by the Central Government over provincial budgets when the President is of opinion that a financial emergency has arisen there. I do not think that these provisions are called for. I have had opportunities of discussing these questions at length and I shall not therefore dilate on them now, but these two articles and the article No. 365 show that our Constitution is over-centralized. Even in the circumstances prevailing in India, it is not necessary that the Central Government should regard the Provincial Governments as its perpetual wards. Under the Government of India Act, 1935, the Governor, I believe, was responsible among other things for the maintenance of the financial stability and credit of his province. The Central Government under this Constitution will take the place of the Governor. We have not been content with the reintroduction of Section 93 into our Constitution in a slightly changed form but have also borrowed from that Act in respect of the control to be exercised over democratic provincial governments in regard to their finances. Article 365 in my opinion shows that the provisions of the Constitution relating to the distribution of powers between the Central and State Governments are based on a complete distrust of the provinces. We are trying to usher in an era of full democratic Government and yet we begin by distrusting the States, on which it will ultimately depend whether democracy succeeds in this country or not. I fear that the Central Government has taken too much responsibility on itself and that the Constitution may, instead of making the State Governments realize their responsibility, will discourage them in the performance of their task and make them feel that they are no more than agents of the Central Government. Such a feeling cannot promote the development of a full sense of responsibility nor can it stimulate the provincial electorates and the legislatures to exercise the supervision that they should in a self-governing country.

Sir, while speaking of the future Constitution of the States I hope you will allow me to say a word about adult franchise on the basis of which members of the Provincial Assemblies will be elected. There is no doubt that property is not a satisfactory basis of franchise. If a man does not pay a tax or does not live in a house of a particular rental value, he does not thereby cease to be a citizen. On the contrary perhaps the neglect from which men like him have suffered for generations is a reason why he should enjoy the power to vote and to bring pressure on those on whom the improvement of his condition depends. But we have to consider whether the sudden expansion of the franchise that will be brought about by adult franchise will be helpful to the development of democratic ideas and that sense of discrimination and restraint on which the successful exercise of democracy depends. In the provinces I believe not more than 18 per cent. of the adult population is enfranchised at the present time. In the States mentioned in Part B of the Constitution there is hardly any franchise. In many of them there are hardly any local bodies. It seems to me therefore that to go at one bound from a greatly restricted to universal franchise is not the part of wisdom. Had we graduated the lowering of the franchise so as to

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bring about adult franchise within a definite period of time—say 15 years—and been content immediately with say, the enfranchisement of between 40 to 50 per cent. of the people, we should probably have allowed less room for demagogy and made it easier both for political parties and individual candidates to meet the electors and educate them; but under the conditions that will prevail under this Constitution, I fear that the education of the electorates will be a needlessly difficult task. All those that have had experience of the ignorance of the electors under the present Constitution will, I hope, agree with me in the view that I have taken of the sudden expansion of the franchise. As, however, it is not possible to change anything in the Constitution before us, let us hope that the political parties in the country and public men ardently desirous of enabling every person to become a responsible citizen will take all possible measures to enable the electorate to understand the duties that it will be called upon to perform and to provide the conditions that will make it possible for the elector to become a self-respecting citizen capable of thinking out, at any rate, the ordinary issues for himself.

Sir, the Constitution, judged from the point of view that I have placed before the House, one cannot but be received with mixed feelings. There are undoubtedly some features of the Constitution that deserve every praise. The Chapter on Fundamental Rights, though some of the provisions in it are open to serious criticism, confers substantial rights on the people of the country, and particularly on the oppressed minorities. It also gives assurances to the minorities that are of the greatest value. Take again the provisions relating to the manner in which the public servants are to be recruited in future. It is upon their honesty and efficiency that the future of the country will depend to no small extent. I think we can feel sure that in so far as the law can provide for it, this Constitution ensures that no man shall be appointed to a public post except on the ground of merit. That is undoubtedly a great achievement and our gratitude is due to the Members of the Drafting Committee and to the House for this feature of the Constitution. But there are several features of it to which one cannot give one's full-hearted support. But support we must, the Constitution at this juncture. I do not think any one of us can cast his vote against it. But some of us at least win regret some of the important features of this Constitution and wish that it had been possible in accordance with the suggestion made by the Prime Minister some months back, to amend the Constitution for a few years, as if it were an ordinary law. (*Cheers.*)

Shri Syamanandan Sahaya (Bihar: General) : Mr. President, Sir the present is a unique occasion in many respects; but above all, it is an occasion for prayerful thanks-giving to the Creator of us all, for the fulfilment of the ambitions and aspirations of our leaders who fought valiantly, now for over half a century, and never considered any sacrifice too great for the achievement of the objectives the fruits of which we are here now to enjoy. How much we wish we had some of them amongst us today to bless us and to guide us in our onward march. I wish also that some spiritual background would have found place as an important feature of this Constitution. This would not have made this Constitution any the different from others, because we find such references in other Constitution also. In our case, however, this matter assumes greater importance because for once in the history of religion and politics, it was the great Mahatma who brought them together, and not only showed the place of religion in politics, but also laid down for the first time that it was not merely the end that should be good and truthful but also the means employed to achieve the end if the end is to be of any permanent good. Some of us, Sir, feel that it is not right to mix up

politics with spiritualism. That in my opinion, is not the need of the hour. While speaking here, or even in other countries, do not our leaders express the importance of the spiritual background of this country ? And would it do, I ask, any credit to us, if we do not give expression to this background in the very first act of this Nation ? However, even if this does not find a place in the written constitution of this country, I trust that in carrying out the purpose of this Constitution, our countrymen and our leaders will keep God in front of them, and in their hearts, and then alone the Constitution will be really successfully worked.

This, day Sir, is again a day for expression of gratitude to the Rishis of old who laid the foundations of this country, spiritual, economic, social and religious, on such firm grounds. The Grand Old Man of India, Dr. Sachchidananda Sinha, while presiding at the preliminary stages of this Assembly, in concluding his speech, quoted the famous verse of the great Indian poet Iqbal-

*Unan o Misr Roman sab
mit gaye jahan se,
baqi abhi talak hai
Hindustan hamara,
kuchh bat hai ki
hasti mitati nahin hamari,
sadiyon raha hai dushman
daure zaman hamara.*

The poet says there must be something inherent in us, that we are still existing. What is that inherent thing obtaining in this country as compared to others ? I submit, Sir, it is the spiritual background all through.

As I said before, the present is a unique occasion, and it is unique in many respects. It is unique in the annals of history, which depicts the past. If we look back to our history, it will be conceded that although we have had at one time milk and honey, flowing in this country under able rulers, and although we had what we are still striving for, viz., Ram Rajya; but it was all the rule of a benevolent ruler, and not a law given unto ourselves by the representatives of the people. I therefore say, Sir, that this is a unique occasion even if you compare the present with our hoary past. Even the future, I submit, will have nothing to equal it. We may have reforms in this Constitution, and we may have better things in the future, but the originality that this Constitution win claim, would not possibly be available to any other.

It is unique, Sir, because we have been able to incorporate in this Constitution not only what was called British India but also the States which were under the administration of hereditary rulers. We can now visualise India as such with one type of administration from Cape Comor in to the Himalayas.

While thinking of this one cannot fail to have a feeling of remorse at the separation of the two wings of this country. Let us hope, however, that good sense will prevail on our countrymen wherever they may be and that we shall have India as we all considered India to be from times long gone by.

The entire credit for this unity that has been brought about must go, Sir, to that firm old man of India, Sardar Vallabhbai Patel. We had read of a Latin saying: "vidi vini vici", and now we have seen it translated into action; because that is what the Sardar has done in the matter of the merger of the States. He went, he saw and he conquered. May he be spared long to serve his country is the prayerful wish uppermost in the minds of all his countrymen.

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The present, Sir, is unique again from another consideration, because it ushers in independence to this country brought about by a method unknown in the past, the method of non-violent non-cooperation or *satyagraha*. The non-violent method of meeting your opponent without any ill-will towards him has already achieved wonders and will remain an abiding article of faith for the whole world. What a tragedy, what an agonising decision of fate that the man through whose *tapasya* alone this was secured is no more amongst us! India needed him ever so much more today. The effect of that *tapasya* is seen by the results we have achieved in so short a time. But what really pleasantly surprising is that all that some of us talked about in the past regarding safeguards and reservations finds a very small place in this Constitution. What a pleasure that those who were enthusiasts of such safeguards have willingly surrendered all that in the larger interests of the Nation and they deserve our best congratulation for this.

Last, though not the least, this Constitution is unique in another respect. Mahatmaji's methods once again proved how with goodwill towards opponents, one could win over and conquer the worst of critics and we now see a practical example of a high ideal translated into action, namely that the achievement of independence would go to the credit of Mahatmaji, and its codification to one of Mahatmaji's worst critics, *viz.*, the great architect of our great Constitution Dr. Ambedkar. Dr. Ambedkar, Sir, deserves the gratitude not only of this Assembly but of this Nation. He and his colleagues on the committee have laboured to find out the best things almost all over the world and to suit them to the needs of this country. The masterly way in which they prepared the draft and the masterly way in which Dr. Ambedkar piloted it will ever be remembered not only by us but by the posterity with gratitude. Many a defect has been pointed out in this Constitution. I do not think the framers of this Constitution claim any perfection for it, but it cannot be denied that there has been a sincere and a genuine effort to bring about as large a measure of perfection as it was possible under present conditions. Some friends and critics have compared it with, constitutions framed on a tennis court as in France, or with constitutions framed by thirty-nine almost self-elected representatives in America. Administrative problems and principles have gone far ahead since 1787 and it would not do for any nation or any set of people framing a constitution to ignore the onward march and the progress made during the last one and three quarters of a century.

This Constitution, Sir, envisages a kind of Federo-Unitary system of Government, leaning largely towards the unitary system. The long list of concurrent and Central subjects in the field of legislation and taxation, the powers to take over the administration of states under certain conditions, the powers to issue directives to states even in executive matters, certainly make it more unitary than federal. I do not contend that there was no justification for it. But I have no doubt a feeling in my mind that it would have been as well that we had started with greater confidence in the people and the States than what we have betrayed in that part of the Constitution where we deal with the States and the Provinces.

In the matter of Fundamental Rights again, Sir, my feeling is that it has been hedged in by too many conditions and that although we provide for all the liberties in the Constitution, in the very following paragraphs we laid down conditions by which such liberty could be seriously restricted. In fact we have not even given a time-limit to such legislations which restrict the liberty of the citizen. As you may be aware, Sir, in the past every such legislation had a definite life but under this Constitution we have laid down that legislations could be introduced and passed without giving a time-limit to the restrictions they impose on the liberty of the citizen. Perhaps in the present conditions it may be considered as a safety measure; but I will contend again that it would have been better had we started with a little more confidence in our people and left it

to the judiciary to punish those who wanted to convert their liberty into licence. After all what is it that the man in the street or the common man desires Independence for ? He wants to find in the newly-won independence of the country something exhilarating, something new about his status, so that he may be able to strut about without fear of the loss of his liberty. That feeling I submit, will be found wanting. If we refer to clauses (2) to (6) of article 19 of Part III it will be quite clear even to a casual reader that we have tried to place too many restrictions on the common man and too much powers in the hands of the administration. However, much will depend upon the manner in which this Constitution is implemented and I have no doubt, knowing as we do our leaders, that there will not be many occasions to exercise the powers vested in the Government.

In the matter of financial adjustments between Provinces and the Centre think that the Provinces have not been treated as well as they should be. In fact I have a feeling that in this matter the Provinces are worse off than in the days of the 1935 Act. The responsibilities of the Provinces, their commitments and their sphere for introducing ameliorative measures for the people are far greater than even those of the Centre and as such they should have been given sufficient scope in the field of taxation. As you are aware, Sir, in Bihar alone although we have the biggest steel factory not only in this country but at one time it was supposed to be the second biggest in the Empire, although our coal resources supply coal to the entire country, although our mica is perhaps the best exporting material, yet because the head offices of all these concerns happen to be either in Bombay or Calcutta the province itself gets very little out of them even by way of incometax. The other day we heard an Assam representative putting forth the same grievance. Considering what we are up against in the matter of our financial resources it would be necessary that this matter must form the subject of serious consideration between representatives of the Centre, the Provinces and the States.

I feel that in the matter, of framing the constitution we have superimposed a Constitution from above and have not made a real effort to start from village life. This matter, as you will remember, formed the subject of an important discussion in this House and I must admit that for once and for the first time I thought that Dr. Ambedkar was not only in the wrong but very much in the wrong. His idea of the village life in this country appeared to be highly inaccurate. It is the countryside that provides all that we need in the towns. Whether you look at the military, the civil administration or the production of food, it is the village and the villager that supply the needs and it will not do to say that they are past redemption. After all they form the bulk of the population of this country. If they have not been up to the expectation of some people, who are to blame ? The Centre in the past did not give them the attention that they deserved. Do we propose to do the same ? If we do so I submit we shall do so at our peril. Unfortunately we have kept the 1935 Act very much in the forefront and hence the other aspects necessary for the uplift of this country have not been properly thought out and have not got the attention that they deserve.

Further we have made a written Constitution but we know of countries which have no written constitution and yet they are functioning as well as if not better than many countries which have a written constitution. It therefore depends very largely on how the constitution is worked. There is no dearth of able men in the country and if a real attempt is made to harness their services without any consideration for their particular affiliations I have no doubt that we shall soon be able to show the real worth of the people and this Constitution.

Before I conclude, I must express the feelings which I and other members have with regard to the very able manner in which the proceedings of this House have been conducted by you, Sir. As far as I know you have never been a member of a legislature before but the manner in which you have conducted the

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debates and upheld the best traditions of a legislature will do credit to some of the best parliamentarians that the world has produced. It is therefore a matter of gratification for all of us.

I do not think I should conclude without saying a word about the great leaders of the opposition in the House—Messrs. Kamath, Sidhva, Naziruddin Ahmed and last but not least the veteran Constitutionalist from Bihar Mr. Brajeshwar Prasad. The large number of amendments that the Drafting Committee had ultimately to propose does show that there was a great deal of substance in the proposals that these gallant Members were making from time to time. Prof. Shah, a valiant fighter, also gave way at the end when the battalion was joined by Mr. Brajeshwar Prasad and with the fun enthusiasm of a neo-convert he carried on the fight to the best of his ability. In fact but for these men we might have been accused of hustling the constitution and to them is due our individual thanks for the way they have carried on the debates now for full three years.

Our Leaders have secured the independence of the country, we have now given to ourselves a constitution but this is not the end of our troubles. It is, if I may say so, the beginning of our troubles. Let us keep before our eyes therefore the wise saying that “Eternal vigilance is the price of liberty” and let us behave in such a manner that it might not ever be said of us that:

*Khola kafas to taqate parwaz hi nahin
Bulbul tere nasib ko sayyad kya kare.*

Shri Rohini Kumar Chaudhury (Assam: General): Mr. President, Sir, I am surprised that some of my honourable Friends have even at this stage of the proceedings chosen to deliver serious and sombre speeches. To me it is a week of joy and rejoicing. Before this week is out, we shall have passed a Constitution which, in my humble opinion, will not only be the pride of India but also a wonder of the world. Sir, under your able guidance, under your distinguished guidance, we will have passed a Constitution which has avoided as far as possible all the evils and pitfalls of the existing Constitutions of the world and at the same time has culled the best principles of those Constitutions and embodied them in one single Constitution for free India. It has not only satisfied the aspirations of the liberty-loving young men and women of India, but it has also added to the past glory of India. It fills our heart with joy when we consider that once more this ancient land which was hitherto known as India only will be known as Bharat. It fills our heart with pride when we remember that Hindi is going to be the official language of this newly liberated country. It fills us with pride when we see that Devanagri has been taken as the script for the entire country. Sir, I feel beholden to my Muslim brethren in this House who have unhesitatingly and in one single voice supported us in fulfilling this desire of India.

Thanks are due to many in this House for this Constitution, I would not like to repeat their names, but I cannot help feeling that you, Sir, have laid us under a deep debt of obligation and gratitude throughout the proceedings. You have been a monument of patience for men like me and others. I take this opportunity of thanking you on behalf of Mr. Naziruddin Ahmad, Mr. Sidhva, Mr. Kamath and myself. I should have liked to add the name of Prof. K. T. Shah in this list but I refrain from doing so advisedly. He has been reticent, entirely reticent, for the last two sessions. It seems that while in the case of Mr. Naziruddin Ahmad the thieves have only taken away the copies of his amendments, in the case of Prof. Shah the entire original copies have been taken away, and it is for this reason that in the last session we did not have his speeches nor any amendments from him excepting a few.

Sir, I remember vividly the words which were uttered by that gallant gentleman, Dr. Sachchidananda Sinha who opened the proceedings of this House and who congratulated you on your election. He said that throughout the course of your life you had never stood second. You had stood first in the Calcutta University the territory of which had extended from the Punjab to the remote Assam. He also expressed the feeling that you had seriously disappointed him by refusing to become a High Court, Judge. Sir, I say today, and I think the House will agree with me, that you stand first in piloting this Constitution of this country. You have enabled a subject nation—we were still a subject nation when we started making this Constitution—to become an independent nation in the course of the proceedings. I hope that though you have once disappointed Bihar, you will not disappoint the rest of India by refusing the position of honour and distinction which is justly your due under the new Constitution.

I had referred to the serious and sombre speeches which were made by some of my honourable Friends. But how is it that two important points had escaped their attention? These points relate, according to me, firstly to protection against cows. We have in this Constitution cow protection to some extent but there is no provision at all for protection against cows. There is also no provision in this Constitution for protection against women. I should say protection against women is very essential. You have made some provision in the Directive Principles for protection of women and children, but you have entirely failed to take into consideration one very important fact, protection which is needed against women. I hope this House unanimously accepts the point which I am making now and regrets equally with me that there has been no provision in the Constitution for protection against women, and if there is any dissentient voice, if there is even any dissentient golden voice, let her come out and protest against this expression of opinion on my part.

An Honourable Member : Are you oppressed by women so that you ask for protection against them ?

Shri Rohini Kumar Chaudhury : I would like to develop that point. It is not a new idea with me.

Honourable Members who had the courtesy to listen to my honourable Friend Mr. Nichols Roy from Assam must have heard what he said about these cows in Assam. He said that unless the uneconomical cows at least are allowed to be slaughtered, they will be a great source of danger. I can amplify his ideas and say that there is really such a danger in Assam because the habit of cow-keeping is not prevalent in that Province. Cows are brought to the homes only after they calve; they calve sometimes in the streets and sometimes in the fields but never in the house of any human being. These cows who roam about freely for nine or ten months in the year and breed the calves become very dangerous; they are in a semi-wild condition and they begin to attack and gore any person who approaches them. Therefore, it is necessary to have some protection against them. There are also a number of weedy bulls in the Province of Assam as a result of which the breeds of cows are stunted. If you allow all this cattle to live as they like without any human care and attention then really the cows will be a source of danger and it will be necessary to protect ourselves against them.

The idea of protection against women also is not my own idea. My honourable Friend Dr. Deshmukh had tabled an amendment for removal of the cursed system of prostitution, but he did not move it. I think Dr. Deshmukh felt shy in the presence of all the ladies here to actually move that amendment, but I think that was a mistake. We really need protection against women because in every sphere of life they are now trying to elbow us out. In the offices, in the

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legislatures, in the embassies, in everything they try to elbow us out. They succeed for two reasons : one, our exaggerated sense of courtesy, and then because of their having some influence in the ear of those persons who have authority. One good thing there is about this Constitution for which I would like to congratulate Dr. Ambedkar and that is that he was not insistent on giving special seats for women. That is at least something saved, some achievement made. Now, even after seats for women have been abolished, if the feelings of man are such that he should push them forward. I would very much regret it. It is not Dr. Ambedkar who is responsible for it. It is the foolish man who wishes to give them votes and send them to the legislatures and thus create troubles like the trouble which they have created in the matter of the Hindu Code.

Now, Sir, I would like to refer to the speech of my Friend Shri L. N. Sahu. Hearing him one would think that there is nothing in this Constitution worth looking at. He repeated the language of those who said, and rightly said in regard to the Government of India Act, that it should not be touched with a pair of tongs even. That seems to be the idea of my Friend Shri L. N. Sahu. But may I ask him to push his memory back to the first week of December 1946 ? What was our position then ? The Muslim League had boycotted the elections and tried to boycott this Constituent Assembly. It was said that unless the grouping system was agreed to, the Constituent Assembly will not sit. When the Muslim League stood out in a body boycotting the Constituent Assembly, there seemed to be no use proceeding with this Assembly. There was, I remember, a voice even among the Members of the Constituent Assembly who did not belong to the Muslim League which said that we should better postpone the Objectives Resolution, allow the Muslim League Members to come to the House and then proceed with our work or postpone the sitting of the Constituent Assembly altogether. That was a very critical moment. If at that moment our leaders had hesitated and faltered, if our leaders Pandit Nehru and Sardar Patel had faltered, the hope of acquiring independence at early date would have completely disappeared. If on the other hand we took our seats as Members of the Constituent Assembly, if once the Constituent Assembly which is a sovereign body assembled in session, there was no power on earth which could obstruct the gaining of independence. In fact it has proved so. Pandit Nehru, with absolute determination, said "Let whatever happen, let grouping come or not, let the Constituent Assembly sit and decide the question." When once it sat the way to independence was clear and open, because whatever Constitution was made by the Constituent Assembly would be the constitution that will be enforced. So, Sir victory in the fight for independence was achieved from the moment the Constituent Assembly sat. And today we must give all credit to those statesmen who somehow or other brought about the first meeting of the Constituent Assembly. Sir, when you remember those days, you remember also Mahatma Gandhi who had smashed the grouping system. Unfortunately, even the Congress Working Committee was not in a clear mood on that point. But for Mahatma Gandhi, and our Premier of Assam, the major provinces Of Bengal and the Punjab and a large area of Assam would have become part of Pakistan. So, may I ask my honourable Friend Mr. Sahu to ponder over this and see what we have gained by carrying out the plan for the Constituent Assembly and the Constitution ? What is the position today under the Constitution and what was the position the other day when he was in December 1946 ?

Sir, I had not the honour of listening fully to the speech delivered by my honourable Friend Mr. Kamath. I think he did not give his whole-hearted support to the Constitution. I am really very much touched by the recent activities of my Friend Mr. Kamath. I had undertaken certain responsibilities

on his behalf after completing the work connected with Constitution-making I am referring to my personal relations with him and his personal life. I am disappointed with him and I do not know if I will proceed with the work in connection with which I had given him an assurance. He has of late taken to saffron-colour robes. You have seen how he is going about in his saffron colour robes. He has been referring to God at all times. He wants the Assembly to commence its work with a prayer to God. All those ideas of his have stupefied me. I am afraid that a time will come, when he is in the spirit in which he gave up the Indian Civil Service for doing service to the country. It seems that he will give up worldly life even for the furtherance of his ideas.

Shri A.V. Thakkar (Saurashtra) : May I ask how this is relevant to the, Constitution ?

Shri Rohini Kumar Chaudhury : Sir, the relevancy is this: We have framed a Constitution for ourselves over which we must rejoice. We have done enough serious work. We must feel happy about this Constitution and when we are happy we should not be gloomy and brooding. I would say in the words of Byron: 'What is writ is writ. Would it we are wiser'. You cannot undo what you have done, by making many serious speeches. But for the advice of my honourable Friend Thakkar Bapa I would now be saying something more serious than what serious-minded people could say. After all, Sir, it will not do to be grave and formal always as in the saying 'Can man the solemn owl despise ?' So, I say what is writ is writ. We have drafted this Constitution after considerable pain and anxiety, and that is there. I certainly admit that this Constitution is more detailed than any other Constitution. There is no doubt about that. It is perhaps because that we Indians who have been subject to slavery for so many centuries have faith only in written things and not in oral expressions. Therefore, our Constitution is unlike the English Constitution which is an unwritten Constitution, but they too change it whenever there is occasion to do so. In our Constitution we have been more cautious, and put into our Constitution greater details which we could have afforded to leave to the collective experience of our countrymen. Instead of that we have utilised our own collective experience and put in more details into it instead of leaving anything to the future.

But it need not be supposed for that matter that I have nothing to complain against in the Constitution. My bitter complaint is that the Constitution is silent about death sentence. The world is civilised to such an extent now that the continuance of the death sentence is an act of barbarity. The civilised world does not want death sentence. The death sentence has no deterrent effect. I wish we had put in the Constitution that there should be no death sentence. There is no death sentence as far as I know in the Scandinavian countries of Norway and Sweden and in some of the States of America. The death sentence was abolished in Italy but was restored by the Fascist Leader Signor Mussolini and it is only the Fascist tendency in us which still want us to have death sentence in this country. Whatever has been done, there is a liberal provision in the Constitution which enables us to revise the Constitution whenever we consider it fit to do so.

Mr. President : Mr. Chaudhury, you are becoming serious.

Shri Rohini Kumar Chaudhury : I am always serious, Sir, but others take me lightly. For myself, I am always serious, Sir but I am always misunderstood. Those who have been in prison will bear me out when I say that transportation for life or detention for life is a much greater punishment than the death sentence. Death sentence gives a glory to the recipient of that death sentence after the execution of that sentence. That glory should not be given to a criminal. Death sentence whether in non-political cases or 'Political cases gives a sort of added affection from his relatives to the man who has

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been an ordinary villain, who might not have been remembered because of his villainy, who might have been hated by his family, when he is executed. The relations of the man might feel otherwise that the man has been rightly punished, but the moment the death sentence is executed, the sympathy of his family and friends goes to that criminal. Do you think that crime will be deterred by this sort of punishment? By this sort of punishment only the praise, the commendation and sympathy of the family goes to the person who has been executed. After all, we are followers of Mahatama Gandhi, who had adopted to some extent the teachings of Jesus Christ. You must not take an eye for an eye. You must not take a tooth for a tooth. You must not take a life for a life. That should be the feeling of modern India; that should be the feeling of Gandhian India. I think we have made a mistake—which we might correct afterwards—in not abolishing the death sentence by our Constitution.

I would refer to another matter about which I feel strongly. It is about the Arms Act. The Arms Act against which we fought for so many years under the British regime still remains on the Statute Book. Why? Is it because there have been a multiplicity of crimes, you are not going to have this Arms Act repealed. Do not consider for one moment that those who want to commit violence and crime will be deterred for a single moment by your Arms Act. It is only those who want to protect themselves against robbers and criminals who will be deterred. It is only these honest men who are prevented from possessing arms under your Arms Act, and the criminal, the robber and the murderer would never feel handicapped by your Act, and therefore, Sir, I feel that it could have been better if we had abolished the Arms Act under this Constitution.

Then, Sir, there is another matter I would now like to refer to and to which I have been compelled to refer by the speech delivered by my honourable Friend Mr. Kher from Bombay, that is with reference to the separation of the executive and the judiciary.... We have been long crying for the separation of the judiciary and the executive, but we have made no provision for it in the Constitution, but I would not complain so much against that because there is nothing in the Constitution to prevent us from separating the executive and the judiciary, but I was surprised to find that a distinguished leader, a man who is responsible for the administration of a major province, *viz.*, Bombay, saying the judiciary are not knight errants and the executive are not all so many fools or criminals and therefore the separation of the judiciary and the executive need not be made. It may be that in the executive today we have got some excellent men who would not tamper with the judiciary, but how can you guarantee for the future? As a matter of fact, I consider, Sir, that when adult franchise is introduced, we must have some sort of protection and that protection can only be given by an independent judiciary and therefore the judiciary should be made Independent as quickly as possible.

I regret also Sir, in this connection that provision should have been made in the Constitution for the transfer of the Judges of the High Courts from one High Court to another. In some cases, these cases may be penal transfers. For instance, if a High Court Judge from Bombay is transferred to Assam, he would sooner prefer Port Blair. He would never like the transfer from Bombay to Assam, or even a transfer from U.P. to Assam. He would consider it a sentence of transportation for life for almost an uncertain period. What he would do is he would try to please the Governor or oblige the President in a way that would prevent his transfer to a penal province like Assam or Orissa. There would also be Judges in Assam or Orissa who would be very glad to pay anything if they can secure a transfer from Assam or Orissa to the U.P. or

Bombay. Now this method of patronage has been given in this Constitution to the President and the Governor. This is a new patronage, a new avenue of patronage, a new method by which even the High Court judges could be brought and by this way transferred. The old Constitution did not allow such a transfer. The new Constitution in allowing this transfer is, in my opinion, making a formidable mistake and it should be our duty to correct that mistake as early as possible.

(At this stage the President's bell began to ring.)

Sir, I was the third person to give my slip here and the old rule applies to me and not the new rules. The old rule is for 20 minutes and the new rules are for 15 minutes. The old rules apply to me.

Mr. President : Both together.

Shri Rohini Kumar Chaudhury : Sir, I wish to join my voice with my honourable Friend Mr. Sa'adulla in bringing to this House, to the pointed attention of this House the financial condition of our Province. If the situation is allowed to remain as it is, if there is no change immediately made about it, the administration of that Province will be impossible. I have heard that already a collapse is imminent and before the year is out, you will hear that the machinery which is running the Government in Assam will cease to work if for nothing else but for want of funds.

Sir, the other point which I wish to draw the attention of the House is the method of administration of justice in the Excluded Areas. What is the method? The Civil Procedure Code, the Criminal Procedure Code and all the laws which are applicable to the other Provinces of India will not be enforced in the Excluded Areas. I would not have troubled over it if I had known that all the people living in the Excluded Areas were as simple as some of the Tribes are. But some people are most forward and in these hills where people coming from the rest of India lived and in places like Dinapur and Shillong if these people are to be treated as Tribals in the matter of administration of justice, it would be a great misfortune. I would submit Sir, that there is a provision in the Constitution that the Governor can make rules for the administration of justice, he can lay down the law himself. 320 persons are required to frame an Indian Penal Code or amend an Indian Penal Code or the Criminal Procedure Code or Civil Procedure Code but one single Governor will lay down the law for administration of justice which will not only be applicable to the tribal people but will be applicable to the most civilized people of the Punjab or Bombay or Bengal. Is it not a misfortune, Sir ? Would it not have been better to say that all laws should be applicable, there subject to such modifications as could be made by existing conditions. So, Sir, with these words I close. If I have not thanked anybody, it is not that I have forgotten them but the heartiest thanks are due to that dear Doctor of human ailments as well as of Political malady, *viz.*, Dr. Pattabhi Sitaramayya, who has practically forged this Constitution in our party behind the screen.

Shrimati Hansa Mehta (Bombay: General) : Mr. President, Sir, it is with a sigh of relief that we have come to our journey's end. I wish we had taken less time to cover, this journey. Time is of the essence of things and once the psychological moment is past, the thing however good loses interest and so it has become with the Constitution. On the floor of this House and even outside questions have been asked whether the Constitution is good and how long it is going to last. It is very difficult to reply to this question. The goodness or badness of a Constitution depends on how it is going to work. If it works in the interests of the people, it will be a good Constitution; if it works otherwise, it will be a bad Constitution. It is for the future electors to elect the right kind of persons, who will work the Constitution in the interests of the people. The responsibility, therefore, lies with the people. One thing,

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however, I would like to observe and that is in the circumstances in which we were placed, we could not have produced anything better. With such divergent views in the Assembly, it is indeed a miracle that we have achieved this measure of agreement. At one extreme we had Seth Govind Das, the champion of the cow and at the other extreme we had Professor K.T. Shah, the champion of the underdog, and in-between we had many variations; the last speaker would supply a good example.

In spite of all that and in spite of all the many complicated problems that we had to tackle, I feel that we have not done badly. The most difficult problem that we had to tackle was the problem of Minorities. Nowhere in the Constitution we have defined 'Minorities'. We accepted the definition that was given to us by the last Rulers. They created religious minorities, communal minorities in order to help their policy of divide and rule and that policy has culminated in the partition of this country. We do not want any more partitions. What do the minorities want? What can be their claims? The Constitution guarantees equal protection of law, equality of status, equality of opportunity; the Constitution guarantees religious rights. What more can the Minorities ask for? If they want privileges, that is not in the spirit of democracy. They cannot ask for privileges. The only exception, however, I would like to make is in the case of the Scheduled Castes. They have suffered and suffered long at the hands of the Hindu society and any exception in their case would be making amends to what they have suffered. In this connection, the abolition of untouchability is the greatest thing that we have done and posterity will be very very proud of this.

While discussing this question in the Fundamental Rights Committee, we also raised another point. We were anxious to consider the abolition of purdah. It is an inhuman custom which still exists in parts of India. Unfortunately we were told that raising this question will hurt the religious susceptibilities of some people. As far as the Hindu religion is concerned, it does not enjoin purdah. Islam does. But, I feel that Islam will be better rid of this evil. Any evil practised in the name of religion cannot be guaranteed by the Constitution and I hope that our Muslim friends will remember that if not now, later on, this question is bound to come up before the legislatures.

While the chapter on Fundamental Rights is a most important chapter, the chapter that follows, the chapter on Directive Principles of States policy is, also to my mind a very important chapter. In this chapter, I would like to draw the attention of this House to two items. The first is prohibition. A reference was made the other day by the Premier of Bombay that what they are doing is according to the Constitution. I would like to draw a distinction here. Gandhiji's name has been associated with the policy of prohibition. But, what Gandhiji desired was that the State should not manufacture liquor, nor should the State sell it and that public bars should also be closed so that there may be no temptation for those who are susceptible to drinking. But, I do not think that Gandhiji ever desired that we should raise an army of police. Gandhiji never desired that we should spend good money on police. We are prepared to forego the tainted income; but is there any reason why lakhs and lakhs of good money should be spent on excise police? It will only add one more source of corruption, and we have enough of corruption in this country. Another thing, it will perpetuate the sales tax and people who are already burdened with taxes are groaning under the sales tax. I therefore wish to make this distinction that while endorsing the prohibition policy in this Constitution, it does not mean that we agree with the method of introducing prohibition in the various provinces today.

The other item to which I wish to draw the attention of the House is the Common Civil Code. To my mind this is much more important than even

the national language. We have too many personal laws in this country and these personal laws are dividing the nation today. It is therefore very essential if we want to build up one nation to have one Civil Code. It must, however, be remembered that the Civil Code that we wish to have must be on a par with, or in advance of, the most progressive of the personal laws in the country. Otherwise, it will be a retrograde step and it will not be acceptable to all.

The world would have thought very little of the men if they had asked for protection against women in this Constitution; I am very happy to see that the Constitution does not include that provisions. Otherwise men would have had to hide their faces before the world.

Sir, I have felt it a very great privilege to have been associated with the making of the Constitution of free India. I hope and pray that the Constitution fulfils the expectations raised by the Resolution moved in this House by our Prime Minister three years ago and passed, and which forms now the body of the preamble. It is only in the fulfilment of that promise that this country will rise to its pristine glory.

Shri Lokanath Misra : Mr. President, Sir, it is a regret for me that my contribution to this Constitution has been so small that even our President who has been fair and good to everybody does not know my name.

Mr. President : I am sorry.

Shri Lokanath Misra : That really indicates that I have not proved my worth. I am sorry for it and I do blame my President. But, then, Sir, I must say, as a matter of duty what are my reactions to this Constitution which we are going to give to the country for unborn generations to come.

It is my view and so it may be that this, our Constitution Act will go as a great civilised document of the modern world. But I would not like to indulge in any kind of self-praise, praise either for the Drafting Committee or for the honourable Members or for our honourable President or for anybody else. The reason is, we have only done our duty, as best as we could and it is for the people to judge our labours. In fact, the test of the pudding is in the eating and when people will be eating it, they will know how it is tasting. Even if it tastes well, there will still be ground for complaint if it does not give us health and gives only good taste. Therefore, without eulogising ourselves, without praising ourselves, I must say that it has apparently begun with lofty words, but vain ideals; it promises to give us justice, liberty, equality and fraternity, securing the dignity of the individual and the unity of the nation. But the individual! the Nation!

Friends have already said that due to the magic wand of Sardar Patel, India has now become united politically and perhaps geographically. But, I do not find anywhere in this Constitution what is that nation, what is the individual, what is the individuality of the Indian nation that makes India India, that we are going to nurse. I do not find anywhere in this Constitution the individuality of India that makes it different from the other nations. I do not anywhere see in this Constitution what is the individual, his destiny and his purushartha for which the nation will be striving, for which the individual, the family, the country would be striving.

When we go to the Fundamental Rights, we find one thing: whatever they may be professing, in practice they will not give the desired result. They promise liberty, equality. I should say when we think in terms of equality of sex and its liberty one thing comes to my mind. If unfortunately on the emergence of the new woman, women claim freedom and equality in all respects with men and thereby becomes competitors and rivals to men, I am sure there

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will be an end of our civilization on which we have been living all these years. I beg to say that India certainly has an individuality of its own. Gandhiji was saying that India has a mission for the world and it is for the fulfilment of that mission that he was living. If India forsakes that mission, my place will not be here. Now I put to this House what is that individuality of the Indian Nation that we are going to build and give to the world, a message that will be our gift to the world civilization. I beg to say that we have simply followed suit. Instead of calling this an Indian Constitution, I would call it an Anglo-American Constitution Act for India. That is the proper name.

We have given adult suffrage—that sounds well but this sudden and direct application of adult suffrage is to harm to those very people who are going to exercise that suffrage. For instance, there will be about 20 crores of people voting at the general elections. At present they do not know what they are going to vote for, and they will simply be having their right. There will be different parties—rivals in the elections who will be going to people and saying ‘we will give this or that—do not vote for them and vote for us.’ That will simply engender in them a sense of right without a sense of duty and they will vote and be voting for a certain party which will never be in a position to deliver all the goods. Their appetites will only be whipped up. It can lead only to chaos—and to no healthy growth. I therefore say that our adoption of the Party Government of England can do more harm than good as at present. But let us hope that our statesmen and our leaders will be responsible enough to educate the people in such a manner that best use may be made of this great leap.

I think, as many friends especially the honourable Mr. Prakasam said, our Constitution could have been genuine only if we had built it on the solid foundation of panchayat raj which is still in our veins and still favoured by our people. That would have given us little democracies and enabled people who will be democrats to exercise their rights with a responsibility and with zeal and also with joy. But now under this Constitution, there will be two classes, a new ruling class at the helm of affairs and at the bottom there will be the common man exercising a vote once in five years. In the middle the middle-classes will be crushed entirely and I would say if the middle-class is crushed, the entire intelligentsia of the country will be crushed and then we will not know what is the future of the country.

Let us take another article of Fundamental Rights—article 31 relating to properties. Now in the whole Constitution this is perhaps the most absurd article. *Prima facie* this article says what is not justiciable upto 26th January 1950 will be justiciable afterwards. Supposing for instance the U. P. Bill now pending or the Bihar Bill now pending before the commencement of this Constitution Act is passed after the Constitution is passed, the provisions of that Act, under this article will not be justiciable but if that same Bill or most of the clauses of it are incorporated in a Bill before the Legislative Assembly of Orissa, after the commencement of this Constitution and if that is passed, that might be justiciable. I do not understand how what is not justiciable now can be justiciable afterwards. And then again look at sub-clause (6). Whatever has been passed within 18 months before the commencement of this Constitution will not be justiciable and whatever was passed beyond 18 months will be justiciable. This discriminative provision is quite out of place in Constitution, particularly on the Chapter of Fundamental Rights. Then again we do not say here what is the definition of ‘property’, what is ‘possession’ and ‘acquisition’ and what is ‘public purpose’. For instance in Orissa our Land Revenue and Land Tenure Committee has come to the conclusion that abolition of zamindari does not involve any taking of possession or acquisition for public purposes. The reason is, every zamindar has two rights—the right to collect rent and the right to cultivate his own

private lands. Suppose we leave his private lands to him and take away the right to collect rent, what property is he going to lose for which he will be recompensed? And suppose we abolish entirely feudalism, we abolish land revenue and instead we raise some tax, what is there to say that there is some property which is being confiscated or expropriated for which there will be compensation? These are anomalies we have chosen to bring in for nothing. It would have been enough if we had only article 31 clause (1) and nothing else. These will bring unnecessary conflicts and I think-I am not blaming anybody—a spirit of undue compromise has been responsible for enacting this article and this gives a clue to the very mind that has been actuating all things in framing this Constitution.

I, therefore, submit that this Constitution has been framed to please as many as possible but it has been a medley of ideas and ideologies and I think there is no coherent, genuine substance behind it which can hold us on. The reason is simply this. We have been so much imbued with modern ideas—ideas with which we have been spoon-fed for years, that we have forgotten ourselves. Is there nothing genuine in this land which could be the solid foundation for our future Constitution? If you want to go in for a civilization which has not been tested in our land, and which is still on its trial—I think we, are going to undo everything real and I do not know, what the future will bring us to. Now Sir, we have given adult suffrage. Well and good. After having done that, it is my submission that we should have raised the age of people who would be seeking election. In my view for the Lower House it should have been not less than 30 and for the Upper House not less than 35. In that case we could have somehow brought control over these matters and brought sense to our people.

Then again we should have given high rigid qualification for people who would be coming to Legislatures. We know what is in store for us. We know that this Constitution is founded on a Parliamentary System and any parliamentary system is founded on the members who will form the Parliament. If those members are not sober, honest, wise and able, I think the whole system of Parliamentary democracy will go down. But as I see, this Parliamentary system will go wrong for the simple reason that we have not given a rigid qualification for those people who will be taking this great responsibility. We should have advised rigid qualification for members, honest people people not exploiting people, not encouraging black markets and people who command confidence and selfless devotion. But shall we immediately see clash of interests, competition and no corporate existence? The result would then be that in the name of Parliamentary democracy, there will be chaos.

Now, Sir, a word about centralisation. We have, now in the name of a strong State, so centralised power, that I am afraid, due to its very weight, the Centre is likely to break. However good Pandit Jawaharlal Nehru may be, and however good Sardar Vallabhbhai Patel may be, they are more distant from me than is my home in Puri from Delhi. It is not possible for me to talk to them as my own man. In actual life, in fact, it is my family, my village, my district and my province, thus we go. And now think in terms of India in a great leap is simply absurd. In certain spheres, it might be good to centralise. But we have so empowered the Centre, and we have made the Provinces so powerless that in fact, I am afraid, there will be no initiative in the provincial Legislatures or even in the provincial Ministers. In fact, this Constitution really tends to make the people irresponsible, and simply remain content with voting once in five years, and caring only for the Centre and cajoling the people in power at the Centre for this and that advantage. In this way, we have made this irresponsible Constitution in the hope of giving responsible government to our people.

With these words, Sir, I say that with great honesty and great labour and with the best of intention we have passed this Constitution, and it is for us

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now to see what shape it will take in practical working and it will be our bounden duty to maintain this Constitution, and to educate the people in the lines of this Constitution. That is a great task and I hope our country will be equal to that task, and that our leaders at the Centre will be equal to that task, because if they go wrong, the Centre is so strong that the nation will go wrong, and to me it seems there is more chance of going wrong than of going right. Jai Hind.

Mr. President : The House stands adjourned till three o'clock.

The Assembly then adjourned for Lunch till Three P.M.

The Assembly reassembled at Three P.M. after Lunch, Mr. President. (The Honourable Dr. Rajendra Prasad) in the Chair.

Shri Jadubans Sahay (Bihar: General) : Sir, much has been said regard the different aspects of this Constitution. I for myself do not agree with me who have shown a spirit of despair and disappointment over this Constitution as a whole. I think, Sir, we have nothing to grieve over what we have done. It is only an exhaustion of spirit which has been shown by some of the Members when they have criticised this Draft Constitution out and out.

The fact is that we are a nation born new and we have to learn the arts of democracy. The lessons of democracy are not taught in any book, but they have got to be developed. It all depends upon the character of a nation, the integrity, the honesty, our love for democratic principles and our zeal to pursue and follow them which can make or mar a constitution. The constitution of a country does not depend upon the cold letters, however beautifully or brilliantly printed in a book. It depends for its growth and development upon the character of a nation. It is the soil—the character of a nation—upon which the seeds of Constitution have got to germinate. If the soil is rocky or barren, then certainly howsoever good the Constitution might be and in howsoever grand language it may be worded, it is sure that the Constitution cannot lead us to our goal. But I have faith, Sir, in the innate genius of our country. I have faith also in the coming generation of tomorrow and we have nothing to despair over what we have done. I think that no amount of guarantees in the Constitution or the filling up of the omissions mentioned will carry us to the goal. It depends upon those who work the Constitution. It depends on how we develop the spirit of tolerance and not on the Constitution or the letter of the law. It depends on the spirit of love towards those that are down-trodden and those who call themselves minorities. We may enact in the Constitution that untouchability is abolished in every hearth and home but that carries us nowhere. You should have love and sympathy for what we call the 'have-nots'. It does not depend on the Constitution or its articles. It depends upon our own character, our own vitality as a nation.

It am not one of those who share a feeling of disappointment and so I shall approach the Constitution with a dispassionate mind and touch on one or two points and no more.

We had our struggle for freedom and we have won the independence of the country. But it is political independence or political freedom. The pre-dominant slogan for 25 or 30 years from the lips of every patriot, every soldier of freedom was the elimination of British rule. The economic slogan was not there. British rule has been eliminated and political sovereignty has been won. Therefore, in the Preamble of the Constitution we are going to declare

that India is an Independent Sovereign Republic. Even though we are going to declare it on the 26th January we are already recognised by the nations of the world as such. During the last 30 years the struggle for economic democracy was not in the forefront and the result is that even in the Constitution we have glimpses of the challenge to the economic structure of society. The economic structure of society as it existed hitherto will exist hereafter and there comes the clash. There is today a crisis in our country. There is crisis in agricultural production, there is crisis in the production of industrial goods and we have not been able to solve it. We are taking all the measures we can and yet they are not bringing results as speedily as we want. What is the cause? The cause is something which challenges the economic basis of our society and demands a radical change.

There is the property clause No. 31 in the revised Constitution. You will excuse me if I say that it is a hesitant, vacillating and insipid approach to the vast problem facing us. On one side in China, Burma and other countries subversive forces, alien to the genius of this country, are knocking at our doors and coming like an avalanche. Communism will flourish in a country which is backward agriculturally. In China it has been flourishing and it will flourish in Burma. How are we going to tackle it? We are out to abolish the zamindari system. In article 31 we find that the advantage which we have reluctantly given to provinces like Bihar, U.P. and Madras cannot be shared by Bengal, possibly Assam and Orissa also. These provinces have not been able to bring a bill in their assemblies till now. Do we think that we can challenge Communism in this way? Communism cannot be crushed by bullets, neither by our military nor police. It has to be tackled in a different way. The root cause has to be diagnosed. The disease lies in the discontent of the oppressed and hungry millions of the country. We hear of bombs, bullets, acid bulbs and the burning of tram cars in Bengal. The Bengal Government is for the time being engaged in her domestic problems. They have not been able to bring any Bill for the abolition of feudalism in their province. After the 26th January they will be deprived of the benefit which we have given in clauses (4) and (6) of article 33 of the Constitution. Not only in Calcutta and other big towns but we find Communist influence growing in the rural areas also. It is there among the Santhals, the aborigines and the *kisans*. They are all becoming victims to the Communist slogans and propaganda. You cannot stop it by sending the police to the villages. In the very nature of things it is impossible. In the Constitution we have tried to approach this problem in an insipid manner. There is a clash of ideology. There are two schools of thought clashing with each other,—one trying to maintain the old economic structure of society and stabilise it and the other trying to destroy it and reshape society on a new economic basis. I would invite attention to article 31, which is a compromise formula born out of the tug-of-war between the two schools of thought. We have not been able to touch other interests than agricultural interest. Even the zamindari or feudal interest has been touched in a very lukewarm manner. The economic structure of a country is responsible for its political development. On one side we are going to give adult franchise to the vast millions of our countrymen. We are going to clothe them with political power—those who do not have two square meals a day and those who are almost beggars in the streets, and those who remain unemployed for nine months in a year; on the other hand you are going to stabilise the present economic structure of society. You want to maintain the *status quo*. Here is a problem which you will have to solve. We who, belong to the great Organisation which won political freedom and which shaped to a very great extent the Constitution of the country, if we run away from this problem, the problem is not going to run away from us and

[Shri Jadubans Sahay]

it will pass into the hands of others for solution. It will be solved by those who will bring in foreign slogans and a foreign sphere of influence into the country. Are we going to leave the solution of that problem to them ? It is a challenge which we have not been able to answer in this Constitution.

But I will not harp on this point because the Preamble is enough guarantee if we want to work the Constitution honestly, vigorously and with integrity. It is enough guarantee for those who are downtrodden, for the *kisans*, for the labourers and for the, *mazdoors*. If we do not work it in the proper spirit, then what is meant by economic justice? What is economic justice to a man who has not enough food to eat, who has not an anna in his pocket ? You will say he has got the right to stand for Parliament. Is that economic justice? It is a farce. You will say that your schools and colleges shall be open to all the sons of *kisans* and *mazdoors*. Is it giving them education ? How many sons of *kisans* and labourers are there in the science colleges of the different Universities ? Very few. So it is a farce. Let us not in this age, when practical problems demand solution at our hands, run away from the realities of life. Times are changing and we have got to adapt ourselves. The greatest virtue of the Congress was this; and it was the greatest virtue of the Father of the Nation also, that he used to adapt himself or rather he used to keep his fingers on the pulse of the time and when he found that we were fit for such and such a thing he used to dictate the remedies to us. But what are we doing today ? We are in an economic deadlock with devaluation, export and import questions and the problem of 'Produce more or perish' facing us. We are appealing to the industrial magnates for their generosity and charity in connection with the sugar scandal.

I would have been glad if we had incorporated in the Constitution at least the hope of a classless society for the people of this country. It is not a socialistic thing, it is not born out of the philosophy of Marx. They were the very words said by Mahatma Gandhi. If he had been alive today he would have practised and brought it to reality. Sir, some people run away from the idea of this classless society and say that it is a thing which the Socialists and the Communists proclaim and that therefore we should not touch it. But no; it is rather the voice of those who have got vested interests in this country, it is the voice of those who want to keep down the millions of this country. Mahatma Gandhi who was the greatest lover of the downtrodden not only in India but over the whole world had clearly said that India wanted a classless society. But what are we doing today? What to say of a classless society, even the words nationalisation of property are not there either in the Fundamental Rights or in the Directive Principles. What hopes are there for the millions in this country? The only hope is that our leadership in this country certainly is very sound and is sensitive to public opinion and I have every hope that if we try, under this Constitution we can do all those things, we can bring about a classless society, we can bring hopes to the doors of the teeming millions, we can bring solace to their huts and homes. All this we can do out of this Constitution if we proceed honestly, if we proceed with the knowledge that democracy does not mean anything if it does not mean economic democracy. Democracy of the few, of the few educated persons who live in the houses of Delhi and who come from the various Provinces, is no democracy at all. Real democracy means that we are the servants of the people, the real representatives of the people. Let us say that this is the greatest experiment in the history of India because this type of democracy did not exist before however much you quote the *Shastras* and the *Puranas*. This greatest experiment will fail not because of this Constitution but because those of us—who have been charged by destiny to represent those who are not here, those who are hundreds of miles away from us,—do not really represent them.

With these words, Sir, I will again say that the success of a constitution depends upon not only those who work the constitution but also upon those for whom it is worked. This Constitution is a real test of our national character and I hope that we will do nothing to hang our heads down in shame.

A lot has been said about civil liberties and such like things. I am not concerned with those things. Civil liberty in the abstract sense does not appeal to me. If the country does not exist, where is the civil liberty? What we find today is a handful of persons trying to misguide people. We call them Communists and we call them by other names, but they try to misguide a large number of the people of this country. Fighting for civil liberties at this stage will be endangering the very life of the State. We have got various problems knocking at our doors, some from Pakistan, others from the Western world. At this stage civil liberties of the type envisaged by jurists and written in the books which we have read in the colleges will not do for this country. If the educated people want to have civil liberties of the best type, they will have them in spite of the hedges town around by this Constitution. The sedition law was there but it was changed in course of time. A few words said twenty-five years ago used to come under the Sedition Act, but in 1942 even the 'Quit India' slogans and all the other criticisms were not considered seditious. So, it does not depend upon the cold letters of a book, it depends on the growth of a nation, upon its ability to grow and overcome all these diseases. So, I am not very much apprehensive about the civil liberties about which so much has been said.

I have only one more thing to say and it is about the Provinces. It is all right to have the political power in the Centre, but the Provinces, at least those agriculturally backward Provinces like Bihar, C.P., Assam and Orissa where the seeds of Communism can grow at any time, have been robbed I will say you will excuse me for saying so, Sir,—of a very large portion of the income which they used to have at least from the sales-tax. We find in the Constitution guaranteeing the freedom of trade, freedom of commerce and other things in order to sanctify and perpetuate the existing economic structure of society. In matters of sales-tax we find that the Provinces have been deprived of their due share of collection. The benefit has not gone to the Centre but given to the middle classes who try to purchase a thing and sell it at another place. Take the case of Bihar. We will lose more than Rs. 2 crores by this amendment relating to sales-tax. You want to have a welfare State, not a police State because police States will not do in these days. If you want to have a welfare State, if you want to have schools and colleges and education for the children of the mazdoors and *kisans* and the downtrodden, hospitals and medicines for them, where will the money come from? You will have to run to the Provinces for that. But their budgetary position will be uncertain; the budgets of these Provinces cannot be framed with any amount of certainty. These financial difficulties for the Provinces should not have been created. They should be allowed to be economically free, to raise money at least from sales-tax so that they can function as a welfare State.

Sir, with these words, I again commend this Constitution for the acceptance of the House.

Shri Gopal Narain (United Provinces: General) : Mr. President, Sir, during last three years when the Constitution was on the anvil I remained a calm and silent observer except twice when I broke the monotony. But at this final and Third Reading stage I wish to record my views plainly, openly and courageously.

At the outset I congratulate Dr. Ambedkar, the Chairman of the Drafting Committee and the members thereof for producing such a voluminous Constitution in which nothing has been left out. Even price control has been included in it. I venture to think that if they had the time they would have

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even prescribed a code of life in this Constitution. A word more for Dr. Ambedkar, Sir. There is no doubt he is lucidity and clarity personified. He has made a name for himself.

Some months back the Honourable Shri Sampurnanand, who came here in connection with a Conference, asked for my opinion about this Constitution. I had told him plainly that it was more or less based on the Government of India Act, 1935 with certain additions taken from the Constitutions of America, Canada, etc. Taking that cue, he has described this Constitution in his Convocation Address to the Agra University as a 'Scissors and paste affair'. I fully agree with him. But I do not agree with my Friend Seth Damodar Swarup who has called this Constitution as a Constitution for jagirdars and capitalists. My opinion of this Constitution is that it does not come up to our standard. It does not even touch the mark. Those Congressmen who have been fighting the battle of freedom for the last thirty years

Shri Jaspat Roy Kapoor (United Provinces: General) : We wish you had given us a timely warning.

Shri Gopal Narain : I was calmly listening when Shri Jaspat Roy Kapoor was delivering his speech. I never interrupted him. I hope he too will not interrupt me. I know more of the Congress than Shri Kapoor. I was saying that this Constitution does not come up to the mark. Those Congressmen who have been fighting the battle of freedom for the last thirty years had a different picture in their minds. They envisaged something different. It has not come up to their expectation.

There is no doubt there are some good points in it. There is bound to be some good points in a voluminous text. I shall refer to them presently. Certainly they have done away with separate electorates. They have included adult franchise. They have also included prohibition. These are very good points no doubt. Also certain amenities have been provided for the backward classes. Their status has been raised. I congratulate the members of the Drafting Committee for providing these good things. These are very good points in the Constitution. But there are certain bad points also.

Articles 21 and 31 are instances of bad points. Article 21 which concerns the life of a man has been made non-justiciable while the right to private property has been made justiciable. These are very bad points that have been included in the Constitution.

One more point I want to emphasise. There has been over-centralisation. The local legislatures have been reduced to the status of local bodies, municipalities, local boards and the like and, as a necessary corollary, the provincial legislatures will turn the local boards and municipalities to nullity. Though Panchayats have been given some powers, I fear they will not have any scope for working. This, in my opinion, is not good.

One more point I wish to stress. There is no room in this Constitution for amalgamation at some future date of this divided India. The doors have been barred and banged against such a possibility by the adoption of Hindi as the official language. This bangs the door against Western Pakistan amalgamating with our country. Though this has been done, let us hope that Hindi will be such that it will leave some room for this amalgamation at some future date. Otherwise there is no room in this Constitution for the amalgamation of the two countries. This is a very battle aspect of this Constitution.

In conclusion, Sir I congratulate you for so ably conducting the proceedings of this Assembly. You have been very accommodative. You have not given any Member a chance to say a word against you. I conclude.

Shri Ajit Prasad Jain (United Provinces: General): Mr. President, Sir, it is but once in life that a nation decides to give a Constitution unto itself, and we who have participated in framing this Constitution have a good reason to be proud of our lot. In the history of India there have been periods of greatness and glory, there have been periods of great empires and expansion and of benevolent and good kings, but never did we have a Constitution framed by the people for the people. Before proceeding further it is necessary that we offer our thanks to Dr. Ambedkar and the Drafting Committee who have sat day after day incessantly and worked hard.

About three years ago this Constituent Assembly started to function under very different conditions than those of today. India was then undivided, but the Muslim League which was then a rival political party to the Congress had refused to participate in constitution-making. Everybody was asking, "Could we frame a Constitution with the Muslims absent almost *en bloc*?" Then came the Partition which we had to accept with a heavy heart. None among us can be happy with a partition of the country, but nevertheless it must be admitted that this has smoothed our work of constitution-making. In particular the question of minorities which had been our headache and which thwarted all our efforts for the solution of national problems has ceased to be a live issue. Maybe that we have not so far succeeded in establishing a fully united and harmonious society, but much of the old rancour has disappeared and we are on the path of achieving a real national unity.

The Constitution which we have framed cannot be, on the political or economic side, said to be a revolutionary measure. It has not only accepted the general framework of the Government of India Act of 1935 and repealed its phraseology, but it has continued the old laws and institutions. All the laws in force immediately before the commencement of this Constitution, except those which come in conflict with the Fundamental Rights enumerated in Chapter III, shall continue to be laws under the new Constitution. The Federal Court will function under the new name of Supreme Court with some additional jurisdiction which had hitherto vested in the Privy Council. The Judges of the Federal Court will become the Judges of the Supreme Court and the Provincial High Courts and their Judges will be the High Courts and High Court Judges in the corresponding States. The Advocate General, the Comptroller and Auditor General shall perform the same functions and be the same persons as were discharging those functions before the new Constitution. The Federal and the State Public Service Commissions will have the same personnel and essentially the same constitution. The services appointed by the Secretary of State or the Secretary of State in Council under the Government of India Act shall under section 314 "be entitled to receive from the Government of India and the Government of the State, which they are from time to time serving, the same conditions of service as respects remuneration, leave and pension, and the same rights as respects disciplinary matters or rights as similar thereto as changed circumstances may permit as that person was entitled to immediately before such commencement." Thus, it will be seen that it is not even the case of pouring old wine into new bottles, but of old wine and old bottles. Both the laws and the administrative machinery, under the new dispensation will not be much different than the old.

Economically one has to look to article 31 of the Fundamental Rights. It says, "No person shall be deprived of his property save by the authority of law and that no movable or immovable property..... shall be taken possession of or acquired for public purposes..... under the law provided for compensation for property taken possession of or acquired." Except for the exception provided in the case of zamindari rights in certain provinces and a few other comparatively minor changes this article reproduces section 299 of the Government of India Act. It maintains the capitalistic structure of

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society with its inequalities of wealth and income. Perhaps under the existing state of our economic plight much of it is inevitable, but in the ultimate analysis this state of affairs cannot continue for long. As the Honourable Mr. Gadgil said the other day, we shall have to make a fundamental change in the constitution of our society. We shall have to nationalise many industries which today are held by private enterprise. Without that, there cannot be any solution of our economic problems of national well being.

Sir, the Britishers had left us in a highly precarious condition. Overnight on the 15th August 1947 more than five hundred Indian Princes, big and small, became Their Majesties. Travancore and Bhopal were showing truculence. Junagadh had acceded against the wishes of the people with Pakistan and Hyderabad adopted an attitude which might well be termed hostile towards us. Under these conditions, the spectre of disunity which has been a remarkable feature of our history, as also the history of many other Asian countries, was staring us in the face. It is no small achievement that within the brief space of less than two and a half years we have attained complete geographical unity, the Indian States disappearing as political units. A glance at Part B of the First Schedule will show that what was formerly known as Indian India, and divided into more than 500 States, has been transformed into nine States. Chapter VII, in my opinion, is the brightest feature of this Constitution as it places the States constituted of the old Princely India *pari passu* with the States in Part A which represents the Indian provinces. Nevertheless, we should not forget that what we seem to have achieved thereby appears more on paper.

The public opinion, the political parties and electorate, the administrative machinery and institutions which constitute essential features of a modern democracy and which exist in much more realistic shape in the States corresponding to the provinces, are not to be found in the States constituted of Indian States. They have yet to make up a great leeway and our real achievement will be judged by how far we have been successful in achieving factual equality between States in Part A and Part B of the First Schedule. Let us hope that under the wise statesmanship of Sardar Vallabhbhai Patel, it will not take too long to achieve in reality what we have achieved theoretically on paper.

I have said that mostly the new Constitution is not much of a departure from the existing Constitution, but in some respects it has inaugurated what may be rightly called a revolutionary era. In future every adult, man and woman, who has attained the age of twenty one shall enjoy full and equal franchise. Our political institutions, Parliament and Legislatures of States, will be elected on the basis of adult franchise. This indeed is revolutionary. We are going to have the biggest electorate in the world, bigger than that of the U.S.A. and U.S.S.R. Such an experiment cannot be free from danger but let us hope that with the inimitable leadership which India possesses, we shall steer clear the ship of the State.

In Part II, which defines citizenship, all persons born in India or who are *bona fide* residents of India or who have migrated from Pakistan and made India their home have been given equal recognition as citizens without distinction of religion, race, caste or class. Citizenship constitutes the rock foundation of our Constitution. All the rights in the Constitution are equally guaranteed to all citizens. Every citizen of India shall have the right to freedom of speech and expression to assemble peacefully and without arms, to form associations and unions, to move, settle and acquire property in any part of India and to practise any profession or trade or business. It must be admitted

that these rights to freedom are fundamentally restricted by certain clauses that follow. For instance, the right to assemble peacefully and without arms is restricted by that infamous section 144 of the Criminal Procedure Code. It is bad but perhaps not too bad to have this kind of restrictions until we the citizens of India have learnt the virtues of self-control which flow from the exercise of true freedom. Nevertheless our success will be judged not by the frequent use of these restrictions but by the infrequency with which we make use of these sections.

Every person has also been given a guarantee of equality before the law. No person shall be deprived of his life and property except according to the procedure laid down by law. There is a provision for preventive detention; perhaps it is a necessary evil under the present conditions, but I must repeat again that our success will be judged by the infrequency with which we use this provision for preventive detention.

Our Constitution provides that there shall be no discrimination against any citizen on the ground of sex. Women have been given equal rights with men to get services and offices under the State and no one shall be debarred from employment or office on the ground of religion, race, sex or descent. It is one of Directive Principles of State Policy to secure equal pay for equal work for both men and women. In our history there have been women who have attained glory and greatness, sometimes outshining men, but there was never a formal recognition of the equality between men and women in the sense that this Constitution has established. Untouchability, which has disfigured the entire history of thousands of years of this country, has been abolished and its practice in any form has been forbidden. It has been declared a penal offence. Everybody has been guaranteed equal rights of access to shops, public restaurants, places of public entertainment and to the use of tanks, bathing ghats, and places of public resort. We have already achieved reasonable success in removing untouchability under the inspiring leadership of the Father of the Nation and these provisions in the Fundamental Rights will accelerate that process. But untouchability is essentially an economic disease. In order that those who have been left behind in social and economic matters, more perhaps on account of the oppression by others, may come up to the general level, the Scheduled Classes, Scheduled Tribes, and other backward classes have been given reservation of seats in Parliament and Legislatures of States and Services until they attain a status equal to others. This protection will in the first instance extend to ten years.

The question of minorities has been another difficult and perplexing question for us. In future no minorities shall be recognised either for reservation of seats in the Legislature of Services except the Scheduled Classes. Scheduled Tribes and other backward classes, which again is not a concession based on religion or caste but on the comparative backwardness of those people. The minorities have been guaranteed freedom of religion and freedom to develop their culture, language and script, but in matters of political rights, there is no discrimination either in their favour or against them. The minorities therefore should have nothing to fear or be apprehensive about their future. It is in that sense that we have established what is popularly known as a secular State.

The Fundamental Rights guaranteed in the Constitution are mostly justifiable, that is, any person who feels aggrieved can have resort to a Court of Law. But it is not always easy to go to law courts and I am not sure whether the spirit which has inspired the Britishers to preserve the rights and privileges secured under Magna Carta, actually informs our people. External vigilance is price of liberty which nations as well as individuals have to pay. And, therefore the responsibility of the State is even greater in our case. It must in practice secure for our citizens rights conferred upon them by law.

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A great achievement of this Constitution is the agreement on the question of language. India has for ages been a multi-lingual country with 13 or 14 major languages and numerous minor ones, some having the scripts and others none. Under the British rule our languages had been neglected and English was forced upon us. In free India English could have no place, but to come to a common agreement about one language and one script all at once was not an easy matter. Fortunately for ourselves, we have arrived at what may be termed to be a happy compromise. Hindi in Devanagari script shall be the State language of India but for the first fifteen years English shall enjoy a privileged place and be the State language for official purposes of the Union for which it was being used immediately before the commencement of the Constitution. Power has, however, been given to the President to authorize the use of Hindi language in addition to English language for any official purpose of the Union even before the expiry of fifteen years. Article 351 provides that "it shall be the duty of the Union to promote the spread of the Hindi language, to develop it so that it may serve as a medium of expression for all the elements of the composite culture of India and to secure its enrichment by assimilating without interfering with its genius, the forms, style and expressions used in Hindustani and in the other languages of India specified in the Eighth Schedule." The law about language thus laid down is elastic and it will depend upon our efforts as to how soon or how late within these fifteen years English is replaced by Hindi. But now that we have taken a decision to substitute Hindi for English the sooner we do it the better. Yet we must be cautious that those who speak languages other than the languages of Sanskrit origin should have no feeling of oppression or depression, for Hindi will thereby suffer more at the hands of its supporters than others. Hindi has come by the Goodwill of all and with goodwill on all sides, let us hope that Hindi will soon become the medium of expression not only for the Union and for the purposes of communication between the Union and the States and in between the States, but also the medium of culture and higher education and training.

Permit me to say a few words about the general make-up and drafting of the Constitution. It has been a general complaint that we have taken too much time and have made the Constitution too cumbersome. I share that opinion and many things which could have been provided for by ordinary laws made by Parliament and rules and regulations have found a place in the Constitution. May be that the Drafting Committee was too much obsessed with the idea of giving too much and too many safeguards, but let us not forget that paper safeguards would come to nothing unless the future generation is prepared to respect them. I have yet to come across a Constitution of a free country which provides safeguards for the services as we have done. I do not mean that we should break any of the guarantees that we have given to the services but surely Constitution is not the place where those guarantees should be provided. We could as well have left the law-making on the comparatively less important matters to the good sense of the generations to come and I am sure that none would have been the worse for it. But at this late stage it will not serve any useful purpose to lay too much stress on that aspect of the question.

Finally, there is nothing novel or striking about this Constitution. It has freely drawn upon the experience of others, and whatever my other friends might think, in my opinion it is essentially bad to be conservative in the matter of Constitution-making, provided the Constitution does not bar or block the passage to progress and new departures. I think there is ample scope for development in this Constitution as will be seen from the various articles giving Parliament the power to make laws even against some express provisions of the Constitution without amending the Constitution. In fact there are parts

of the country, particularly the States representing the Indian States, where the constitutional and political progress and the administrative machinery have not attained a stage fully in conformity with the conditions laid down in the Constitution. I am told on good authority that great efforts will be needed before those parts are ready for the first general election. Naturally, therefore in a constitution made for units in the various stages of progress, some justification exists for a halting manner of approach. Then there is nothing sacrosanct about the Constitutions. At any time when the conditions are so changed, we can have a new Constitution. There will be nothing to stop us from doing that.

Before I conclude, I must thank you, Sir, for the patience and forbearance with which you have conducted the business of, this House even when things became dull and listless. But 'Or your vigilance and guidance the progress of this Constitution may have been slower. Yet you have given no opportunity or occasion to anybody to feel that he has not been given the fullest opportunity to express himself. With these words, Sir, I conclude

Shri S. V. Krishnamoorthy Rao (Mysore State) : Mr. President, Sir, I deem it a great privilege to have had an opportunity of being associated in the framing of this Constitution under your able guidance and I stand before you to add my humble meed of praise to the Chairman and members of the Drafting Committee for making an excellent job of the work that was entrusted to them. Sir, I submit that under the heavy stress and strain of time and circumstances under which they had to undertake this task, no other committee or no other body would have given us a better Constitution.

Many are the charges that are levelled against this Constitution. I would like to enumerate some of these charges. One of them is that the Constituent Assembly has taken too long a time, nearly three years. Let us not forget that the American Constituent Assembly took nine years to frame the Constitution. Australia and Canada and Africa took more than two years. Another objection is that it is too lengthy, that it is three times the length of the Soviet Constitution and nine times the length of the American Constitution. Some Members said that the civil liberties embodied in this Constitution are a farce, that this Constitution is a jumble of the various sections from various other Constitutions of the world, that the Centre is too strong and the States have been crippled, that adult franchise that we have embarked on in this Constitution is a great risk under the circumstances prevailing in the country that the Gandhian ideals have been given the go-by, that this is a capitalist constitution and that the socialist principles have been sacrificed. Some constitutional pandits have objected that the Directive Principles embodied in this Constitution like prevention of cow slaughter, encouragement of village industries, establishment of gram panchayats, abolition of untouchability, separation of the judiciary from the executive, these are all administrative matters and need not have been burdened in a Constitution like this. Objection has also been taken that no provision for referendum and initiation has been included in this Constitution.

As against this, what are the things that we have provided for a this Constitution ? For the first time, after a dependence of more than 1,000 years, India, Bharat has emerged as a Sovereign Democratic Republic. We have embodied justiciable Fundamental Rights which any citizen, when they are violated, can take up to the Supreme Court and have his grievance redressed. We have embarked upon the great experiment of adult franchise and nearly sixteen to eighteen crores of the population of India will be going to the polls when we hold a general election. We have adopted parliamentary democracy. Take any section we find that the supremacy of the Parliament has been embodied

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in the Constitution. For the first time in the history of India, there is integration, political integration, financial integration, economic integration and judicial integration and also defence integration. Today, under this Constitution, there will be no more petty armies; we had a bit of that army in Hyderabad. Under this Constitution, there will be only one army and that will be under the command of the President of India. As regards political and economic integration, I would only quote from the London Times. In a leading articles on 7th February 1949, the London Times wrote :

“The operation by which Bismarck unified the German Reich were on a much smaller scale than those by which the Government of India in a short time has transformed the patchwork of State jurisdictions that made the political map of India a crazy quilt. The transformation has been profound but peaceful.

Sardar Patel can look back with pride and satisfaction at the achievements of his Ministry and the nation pays its homage to the great leader. We have done away with differentiation between the States and Provinces; today, under the Constitution all are States. I am glad, Sir, that much of the sting that was contained in the original article 306-B which is now article 372 has been taken away and article 365 is made applicable to all the States. Nobody likes this article 365; much less do I But, I hope that this article will remain a dead letter and there will be no occasion to make use of the provisions of this article. Under this Constitution, the words minority and untouchables have been abolished. Separate electorates have been abolished. Untouchability has been made an offence. The fundamentals of socialism have been embodied in the Directive Principles of the governance of the State and all titles have been abolished.

As regards the discretionary powers, Sir, I have gone through the Constitution as carefully as I can and I hardly find any discretionary power vested in the Governors except when he has to make a report to the President regarding the proclamation of an emergency or under Schedules V and VI regarding Scheduled Tribes and Scheduled Areas. As regards the emergency powers these emergency powers are subject to parliamentary control and the, least period possible, namely, two months has been prescribed during which this emergency can last and it has got to be brought before Parliament at its earliest session. Even these emergency powers can be exercised only under very limited circumstances when there is a threat of war or when there is external aggression or internal disturbance, or when the Governor or Rajpramukh reports that the Government cannot be carried on According to the Constitution, or when the financial stability on credit of a State is, in the opinion of the President, in jeopardy. Even then, Sir, these emergency legislations have to come under the review of Parliament and if the Parliament passes a resolution that the emergency should cease, the proclamation becomes void.

Under this Constitution inter state trade and commerce is free. Special, provisions have been embodied in the Constitution for the independence of the judiciary, for the independence of the Auditor General and of the offices of the legislatures. Elections are placed above executive interference. We have all India Commissions like the Finance Commission, Inter-state Council, the Public Service Commission and the Election Commission which can function without any interference from the Executive. I submit, Sir, that these provisions which have been embodied in the Constitution are no mean achievement.

I submitted that the Drafting Committee had to work under very great stress and strain. If we can find any parallel at all, we have to go back to

the history of constitution making in America. I would like to quote a passage from a book called the Great Rehearsal by Carl Van Doren. In his book he has stated:

“State loyalties were deeply entrenched in the hearts of the people of America of those days. Loyalty to a new central authority was not easy to create. Many compromises were necessary and many political gadgets had to be invented before a general measure of agreement could be reached, among the delegates to the convention in regard to the shape of the new constitution. With the return of peace, the States had drifted apart. Many of these States could hardly resist the temptation to tread the path of narrow self interest. If the financial interest before the country was grave, the chaos which had overtaken it in the domain of commerce was graver still.”

Mr. Justice Benjamin Cardozo observed:

“that the people of the several States must sink or swim together and that in the long run prosperity and salvation are in union and not in division.”

Washington, in 1786 had written:

“There are combustible materials in every State which a spark might set fire to.”

Carl Van Doren opens his book with the, Chapter, “Commander and Philosopher”. The Commander was George Washington who had led his country to victory. The Philosopher was Benjamin Franklin whose signal services to the nation had made him a legend in his own time. He says:

“The dignity and poise of the Commander, the broad humanity and mellowed wisdom of the philosopher contributed in no small measure to the Success of the convention.”

Speaking of the two great leaders, Carl Van Doren says :

“They had borne the two heaviest burdens of the revolution, Washington at home, and Franklin abroad, each of them too honest to feel Suspicion, too great to feel envy.”

I submit that these remarks of the author apply to India with hundred times greater force. The two great leaders who have been piloting the affairs of the State have borne a very heavy burden and this Constituent Assembly has also functioned as a Parliament during this interim period.

We have crossed many hurdles these two years and under the stress and strain of the stupendous problems that the country had to ‘face, I submit the time that we have taken is too small and in other Assembly placed under similar circumstances could have taken lesser time.

As regards the limitations that have been placed on the Fundamental Rights. I would only submit against the charge that we have, borrowed freely from’ other Constitutions. After all no written Constitution is final in this world. We have to borrow from the experience of other nations. If we take either the pre-war period or the post-war period or the period during the war, and study the working of Federal Constitutions we find the trend towards a strong Centre in every Constitution. The Centre is being made strong today because we are in an atomic age. Let alone a drought in Gujarat or a in Andhradesa—today if there is a drought in Canada or a bumper crop in Australia, the economic set-up of the world is upset and we hear the distant echoes even in our country and when we had to face them stupendous problems in the country and we are still in the midst of them—to be blind to them is, I would submit, nothing but the height of folly. If these provisions were embodied, it is by way of an abundant caution. I do not think even the members of the Drafting Committee like these provisions. I am sure, though, no occasion will arise when these limitations in the Fundamental Right of the Emergency Powers will be used in working this Constitution.

Then there was a charge that Gandhian principles have been sacrificed. I already submitted that we have embodied provisions for removal of untouchability, for national language, for communal harmony and for goodwill and

[Shri S. V. Krishnamoorthy Rao]

guarantees to minorities, encouragement of Gram Panchayats and village industries and for protection of milch cattle. These are the planks on which Gandhism flourished in this country and it created a non-violent revolution in this country. If these principles have been embodied in the Constitution, I want to ask how Gandhism has been sacrificed in this Constitution. I submit that enough provision has been made for the carrying out of the programme that was enunciated by the Father of the Nation. This Constitution is a harmonious blending of the best Indian traditions the political and constitutional experience of other countries and the Gandhian ideals. A great sense of reality pervades the whole structure of the Constitution. Given the goodwill and the will to serve the country and the spirit of self-sacrifice that prevailed in us when we struggled for independence, this Constitution can bring happiness to this country. It is time that we settle down to constructive work and I hope under this Constitution if we have the sense of goodwill that has prevailed in this Assembly in solving many problems like the language problem, minority problem, the citizenship problem, compensation clause etc., I am sure this Constitution will usher a new era in this country.

Regarding the language question, I may bring to the notice of this Assembly that we are already implementing the Resolution that was adopted in this Assembly. I am glad to inform the House that the Government of Mysore has passed an order making Hindi compulsory in all High Schools in the State but I am sorry to find a similar response is lacking from some of our Hindi friends. The Hindi Sahitya Sammelan has criticised the agreed resolution that was passed in this Assembly. I appeal to our Hindi friends to work in the same spirit of give and take and to take us with them so far as the language question is concerned. Given the goodwill I submit once again that this Constitution will pave the way for the happiness and contentment of this ancient land of ours.

Shri Upendranath Barman (West Bengal: General) : Mr. President, this Constitution has been criticised by many Members on account of this defect or that I shall not enter into any controversy over the arguments advanced by them. As I Judge it from the point of view of a common man, I find that this Assembly has given enough for the common man to develop and to rise out of the present hopeless state of affairs. There is no doubt that most of the articles in this Constitution have been taken from the 1935 Act but there is one fundamental change that has been made by this Assembly and that is the adult franchise. It is this right that has changed the whole outlook of the 1935 Act, in this sense that the real democracy will today, tomorrow or the day after come into power. Today the underprivileged class of our country, in spite of all the provisions made in the Government of India Act, 1935, cannot have any power in their hands because of the fact that many of them have not got franchise. They have really no voice in the administration of the country but when this Constitution will come into operation and first election held under this Constitution, I dare say that the whole aspect will change. The 1935 Act gives power to the masses only to a certain extent but because our masses are ignorant, even that part of it cannot exercise it because of class domination and domination by those who are propertied, or who are now in the upper strata of intelligence. But tomorrow when this Constitution will come into play and throughout the length and breadth of this country the masses of the country who form 85 per cent. of the population of India will have the final say or a greater say in electing our legislatures and ultimately in the constitutional heads, the cabinets in the Provinces and also in the Centre. I dare say that their voices will be heard. Otherwise they can choose the next time their own friends. So There is that fundamental

difference which has been introduced by which, though the provisions of the Constitution might be in many parts borrowed from the Constitution of 1935, the conditions will be entirely different.

Now, Sir, it has been said that we have taken too long a time in framing this Constitution. I do not know, but my honourable Friend who has just spoken said that the American constitution making had taken nine years. May I ask the honourable Members who have criticised this Constitution to remember one thing. What was the condition of 'the country before the commencement of the work of framing of this Constitution ? What were the pledges that were before the framers of this Constitution those who had guided the destinies of this country, and what were the problems that they had to tackle? I should like to mention two things. First of all there were five hundred and sixty two native States, and when the British Government had been withdrawn, they were really besides the provinces, five hundred and sixty two parts of India. If this Constitution had been framed in a hurry, would the Constitution have been the same as we have it now ? We can very easily realise that our Constitution would have been quite different from what it is now. and we owe gratitude to the Honourable Sardar Vallabhbhai 'Patel and to other leaders of our country for the way they have tackled this problem of the States. They have tackled it in such a way that in spite of the fact that India was left by the British in such chaos, they have merged India into one within the course of this short period, and for the whole of India we have got one Constitution. There is some little difference here and there, but we must remember the success that we have achieved by this time, and when we do that, we are left in no doubt that these differences also will soon disappear.

The second point, that I may mention is that within our body politic, whoever may have been responsible for it, our country was divided into several communal divisions, and when the British left India, so far as my impression goes, the British before transferring power, took solemn words from our leaders that all the privileges of the minorities would be honoured by them. Our leaders have honoured those pledges and in spite of that, we find that our Constitution today is free from many of the evil things that existed at that time. It is not that the majority has, by the simple force of the majority simplified this matter, and removed those evil things from this Constitution, but it is the minorities themselves who have willingly consented to it, when they found that there is really no cause for any apprehension and that for the good of India they should give them up. As regards my own community, I confess that we thought that at least for some time to come, we should be given some privileges, and I with gratitude thank the Members of this Constituent Assembly and also the leaders for conceding those privileges for a certain period. Now, I would ask, if our Constitution had been framed hastily, do you think this Constitution could have come out in its present state ? Therefore, though there has been some delay,-but as I have said, I do not admit it-yet this delay has been all for the good of the country as a whole.

Coming to the point of view of the common man, as I observed at the very beginning, I find that the common man, or the masses of this country, will be having a great voice in the future administration of our country. After all we are wedded to democracy and there are no two opinions that we should have adopted any other system of Government. Having accepted that the only system of democracy that we find successfully working in the world is the parliamentary system of democracy. We have, therefore, necessarily to look into the constitutions of those 'democracies which are working successfully and

[Shri Upendranath Barman]

in my opinion, the genius of India has accepted the best parts that it could gather from all parts of the world wherever the parliamentary system of democracy works in this very system, I would stress again, the regeneration of the masses, the down trodden part of humanity, lies. According to the parliamentary system as we have accepted it here, the country is to be governed by an elected House, and though there are two parts, two Houses at the Centre, it is the House of the People that has the final say in matters of money Bills, in matters of expenditure and in matters of ways and means Budget, which concern the masses of the country vitally. They are the economic ills that really lie at the bottom of all ills of the masses of this country. In the proper working of this Constitution that we have framed, the masses must be alert, and if they are alert enough or wise enough, they will choose the right leaders who will raise the masses, and they will be masters in this House of the People and also in the legislative assemblies in the Provinces. It is for them to devise in what way the conditions of the masses could be bettered. What more can be done under the parliamentary system of democracy I cannot imagine. If there is any defect in the Constitution, as many honourable Members have already indicated, there is enough scope within the Constitution itself to amend any of the provisions that require to be amended.

Coming next to the actual structural part of the government, that will be set up in the near future, I would only ask the honourable Members of this House to take note of one Directive Principle that has been inserted in this Constitution, I mean the Village Panchayat Organisation; and along with that the directive principles of educating our children up to the age of Fourteen by giving them free and compulsory education. If these two directives are properly observed by our future Government, then I think the condition of this country will be bettered in the near future and that will be to the good of the whole country. A centralised system of Government in a country like India with thirty five crores of people and with a vast area which is perhaps more than Europe will be no remedy for these evils. No centralised Government, with an administrative machinery more especially the one that has been handed over to us by the British, will be able to remove these evils that are now eating into the vitals of the rural areas and of the under privileged. When we have given adult franchise when we have trusted each and every adult citizen in the country to be the masters in the forming of the Government, it would be a folly if we delay even for a single day the constitution of these panchayats. When you have trusted them to the extent of giving them a voice in the composition of the Government, it is but natural that you should trust them with some responsibility. Once you do this, that will relieve us of a lot of burden of administrative responsibility, at least in regard to day to day affairs. So long as you expect the Government servants to take charge of the masses, the masses will remain irresponsible and will go on complaining against the Government. But once you entrust them with certain responsibilities for local administration, they will be keen on taking charge of their affairs.

Of course criticisms have been made that the village panchayats cannot work, because our villagers are ignorant, and that there will be scramble for power. But, a glance at the daily papers will convince us that in most of the provinces there is a scramble for power even on the part of provincial leaders. So, it would be an absolutely silly argument to say that the masses are not yet fit to govern even in their local administration and the interests that concern them the most. My only submission is that as soon as possible we should form these village panchayats and transfer the bulk of the powers that concern the villages to these village panchayats, so that many of the problems of governing this country will be solved.

Last of all, I have to pay my homage to the great Mahatma whom I remember with gratitude. It was in the year 1938 that I had the privilege of meeting him at Calcutta and of discussing with him several problems about the under privileged Scheduled Castes. Amongst many other points, I agreed with him that so long as the British were in power they (the Scheduled Castes) could not expect any privilege by going against them. The Mahatma replied that when the Congress come to power, they would give the Scheduled Caste the privilege they require. After a decade I find that the words of that votary of truth and non-violence have come true. India has become independent now and I with devotion remember those words of the Mahatma. I am also grateful to all Members of this august House for the privileges that they have extended to tile Scheduled Castes of India. I bow down with respect to that great soul who had always the interests of the Scheduled Castes at heart.

Shri P. Kakkan (Madras: General) : Mr. President, Sir, I stand here to support the -motion moved by Honourable Dr. Ambedkar. I also want to express my heartfelt thanks to you and the Drafting Committee for giving all kinds of help to the Harijans by this Constitution. As you know, Sir, Gandhiji, the Father of the Nation, changed the mind of the Caste Hindus and showed a way to abolish untouchability by joint electorate system. Now we have achieved our goal by the joint electorate system.

I believe, Sir, that the Congress Party is the only party which is working for the uplift of the Harijans; not any other party. So from, this august Assembly, I appeal to the Harijans of the Union to join the Congress and work for the uplift of the Harijans. In this connection I would also appeal to Dr. Ambedkar to join the Congress and work for the uplift of the Harijans, with-in the ten years.

I am very glad, Sir, that the Panchayat system has got a place in this Constitution.

I hope that the Government of India will take necessary steps to bring the panchayat system into every nook and corner of this vast country and develop grama swaraj according to the wishes of Mahatma without any distinction of caste, creed or colour.

Lastly, Sir, we have given power to the villagers by the introduction of the adult franchise system. I hope the voters in future will not misuse their voting power. I also believe Sir, the people of India will not forget Gandhism which is not only for India but for the whole world. I would pay my tribute especially to the Honourable Mr. Gopaldaswami Ayyangar, Shri Alladi Krishnaswami Ayyar and Mr. T. T. Krishnamachari who have come from Madras Province because they have done a great service, to this country as members of the Drafting Committee.

Shri M. Thirumala Rao (Madras: General) : Sir, I feel it a matter of personal privilege to add my voice to the chorus of tribute that has been paid to the labours of all the people that have given their time and energy in drafting this Constitution. Therefore I do not stand here merely to derive the satisfaction of speaking something but, with a human frailty that I am also one of those that has played his little part in evolving the Constitution, to say my last word during the last stages.

One cannot but remember with gratitude the great personality that has moulded this nation out of mere clay, enthused it with the idea of freedom fired it with a determination -for action and saw during his lifetime that the ideal had been realised. It may be said that the visualisation of an ideal is, something different from actualisation. The enchantment of distance 'to air ideal which inspired us in those days has gone today, because we have reached our ideal and we are now in a practical position to see what the difficulties are in the actual situation.

[Shri Thirumala Rao]

I thought that the framers of this Constitution and the leaders that have inspired the draftsmen would have incorporated with gratitude the name of Mahatma Gandhi as one of the founders of our nation, the real father of Modern India, who had given a new message to the whole world. I do not know what influenced them not to include his name in the Draft Constitution which would have been in keeping with our traditions, with the traditions of ancient India, for we have always humbly and with gratitude remembered our ancestors from mom till evening on every auspicious occasion. It would have been in the fitness of things if we had incorporated in the articles of our Constitution the name of Mahatma Gandhi but our leaders willed otherwise.

We are on the eve of epoch making events. The West has been in a turmoil It has had its days of freedom for some years and the Eastern nations are now falling one after another for new ideas. India today is at the crossroads between the East and the West and we are now being planted on the road to future selfgovernment in the shape of this Constitution.

I want to say a few words with regard to the merits of this Constitution, because it is a thing that has been inherited partly from past events. There is no use trying to get away from the realities of the situation. In the beginning when this Constituent Assembly was addressed by Pandit Nehru he said that our aim should be to draft a constitution which will give us an independent sovereign republic. The word independent has been given the go by and in its place the word democracy has crept in. This has enabled us to remain within the Empire and not to snap the link with the British Commonwealth. It is the result of the momentum of events and it is the logical inevitability of 150 years of British rule. India has to stay in the British Commonwealth for some more time until we are in a position to discard all sorts of shackles including the Commonwealth. True, the logic of events has compelled us to remain. From a debtor nation we have turned out to be a creditor nation to whom our erstwhile masters now owe to the tune of 1200 crores. Until we are able to recover the amount from Great Britain, until we are able to shed all our previous commitments in the way of the British connection, it will not be in the interests of the country to snap the British connection. That is the only consideration I think that has influenced our leaders and that is the only consideration that has influenced this House to agree to remain within the British Commonwealth for the minimum period that is required.

With regard to the Constitution itself it is a piece of achievement of which our leaders may be justify proud. The British had established their hold firmly on this country by having a strong unitary government and at the same time dividing the country into compartments in which the people had no control. They had created 630 native states called Ulsters, kept them in a most backward condition and they always dominated their policies from the Centre. They had created vested interests in the Muslim community and given them separate electorates. They had allowed them to join hands against Indian nationalism They had created an all India administration whose loyalty was purchased at every turn, at the cost of Indian freedom watch many of us know to our cost. With these three weapons in their armoury the British had founded a unified centrally controlled government in this country which they thought would last as long as their empire. It was perhaps Lord Morely who said that within the purview of human ken he could never imagine the day when the British Empire would be dissolved. The British statesmen have carried on but they never thought that between them and their destiny rose a humble man in this country (who was derisively called the 'Naked Fakir' by the prince of imperialists Mr. Churchill) to upset all their plans and dissolve the empire with the breath of his Satyagraha. With the legacy of a divided India left to us it is the practical wisdom of Sardar Patel which saw through the game and he rose

to the occasion and met it with an equally powerful strategy. The British had left and therefore we have to act exactly as the British had acted in dealing with the situation. When the British left they thought that the States would rise against the Congress Government. But Sardar Patel and his adviser rose to the occasion with the strength of the Congress and the country behind them. He has worked the miracle of dissolving all the States and given them a new shape by incorporating them with provinces or creating unions. My friends from the Native States need not feel any inferiority complex that they are being treated as inferior brothers. Not at all. History tells us that the Native States have been the happy hunting ground of reaction, oppression and backwardness. To overcome all these difficulties in a year or two is not an easy task, but the Constitution has ensured once for all that their status is not inferior to those of the 'British Indian' Provinces that have had experience of the political leadership under the Congress for the last 70 years. Therefore, the Native States have been brought on a par with the Provinces.

With regard to separate electorates, Sardar Patel had again played a notable part by being the Chairman of the Minorities Committee. With the able assistance of a genuine patriot, a selfless patriot like Dr. H. C. Mookerjee who has been our Vice President and has filled the place with equal worth as you yourself, Sir, with his assistance and selfless devotion to the united nationalism of this country, Sardar Patel has been able to abolish the separate electorates for all the minorities and once for all erased from the pages of the Constitution that last canker of British imperialism.

With regard to another item for bringing about the unity of the country, we have been able to integrate the whole of the army into one single Army. Also, we have maintained the tradition of an all-India service in the Indian Administrative Service which will be able to uphold certain standards of conduct, rectitude and incorruptibility so that this country may carry on its policies through this efficient service. By these three agencies which have been created under the able guidance of Sardar Patel, this country has been unified and all those questions dealing with these matters have been incorporated in this Constitution.

The Indian National Congress has been responsible for winning freedom and it has been responsible mainly, if not chiefly for drafting this Constitution. The Constitution has got the indelible impress of the Congress ideology on this. Many friends have complimented you, Sir, that you have risen to the occasion of parliamentary practice by presiding over these deliberations. Perhaps they were not in the Congress, perhaps they have not had the personal experience of your leadership, being the President of the Congress twice and conducting more boisterous meetings of the All-India Congress Committee several times. The efficiency, the capacity, the patriotism and the parliamentary caliber of the All-India Congress Committee is reflected in this House and, Sir, when you were the President of the Congress we need not specially compliment you because it is no new task for you in conducting this Body efficiently as its President. Nor are our statesmen new to the task of Government because our Prime Minister and our Deputy Prime Minister and several other Congress Ministers have more than justified their existence as Ministers owing to their experience as public men and leaders of public opinion.

Sir, I want to say one or two things with regard to the Andhra Province for which I should like to express my gratitude. I want to draw the attention of the House to this fact. When we went in deputation to the Congress Working Committee in 1938 when Babu Subhas Bose was the President, led by the late lamented Deshabhakta Konda Venkatappayya Pantulu, the deputation consisting of some other Congress leaders, the Congress Working Committee solemnly assured the Andhras that they will get the Andhra Province as soon

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as the question of Indian independence was solved. We have not hitched our wagon to the star of reactionism. The Andhras have always implicitly trusted Mahatma Gandhi's leadership and the Congress leadership. They had not flirted with the Simon Commission, they incurred the greatest displeasure of Lord Simon for having boycotted him at every stage of their stay and the British Government thought that we were severely punished by not creating the Province. But we have always trusted Congress and Congress leadership and we are grateful today for having received fulfilment of the promise made by the Congress Working Committee in 1938 in their resolution. Do not understand that the question of the Andhra Province is any 'depressed class or any subsidiary movement. It is an essential movement of our nationalism. They say the administration should be carried on in the mother tongue or in the regional language, but in Madras the administration has to be carried on in English because the Province consists of four different linguistic areas. If every Province in India were to develop fully and our democracy is to work effectively, then you must remove this artificial importance of the English speaking man Between the so-called man in the street, the real taxpayer and the Government.

With regard to adult franchise, I am not very enthusiastic about it. I am afraid it is a weapon which cuts both ways; but fortunately or unfortunately our leaders were committed to it in their earlier stages of agitation asking for a Constituent Assembly based on adult franchise. Adult franchise enfranchises nearly 17 crores of our people and all of them have to be put on the rolls. Without proper education, without the proper development of patriotism in this country, I am afraid this is a dangerous weapon. The Gandhian satyagraha movement has not really permeated the masses. It has touched the fringe of the villages. After all, only four to five lakhs of people have gone to jail, that is, the intelligentsia and the intellectual middle class have been the mainstay of the Gandhian movement and with that experience we must see how far the sense of patriotism has gone down. You saw the spirit of narrowness in one of my honourable Friends, a Member (if this House when he stated that his vision does not go far beyond Orissa. He loves his home, his village, his district and then his Province. His vision does not go far enough to assess the real worth of the leadership of Pandit Jawaharlal Nehru or Sardar Patel. If an enlightened Member of this House has not got a patriotic vision extending beyond the frontiers of his Province, what about the uneducated millions who are led to think by interested politicians in the name of their communities and sub-communities? During the last District Board elections the leaders of our Provinces had come out with statements that sub-communal feelings have been exploited in the elections and people must be careful about it. As a matter of fact, when these constituencies are being divided, interested leaders are already scanning the constituencies to see whether a particular constituency contains the majority of the voters of his own community or not, whether a political adventurer will be able to come out and succeed in that particular constituency by raising slogans against the interests of the country. That is my genuine feeling about the adult franchise. Not that I am less enthusiastic than any of our friends here who are swearing by adult franchise. By all means have it, have it within the next four or five years or within the next ten years on a graded basis. Today the total voting strength is about $3\frac{1}{2}$ crores; make it ten crores by the next elections and 17 crores in the elections after that. But when you are playing with this so-called democratic weapon, it presumes two sides to the question. It is not merely the question of the electorate, it is not merely the question of the members of the legislature that are returned on that adult franchise, but it is also a question of leadership. The country must be able to provide leaders of sufficient calibre experience patriotism and disinterestedness in carrying out the real principle of this Constitution.

Situated as we are, we wanted to have a federal Constitution but we have produced a Constitution that is mostly unitary. We have delegated all the residuary powers to the Central Government and we are trying to make it as strong as possible. No doubt, with all the States—with a cancer like Hyderabad in the stomach of this country—recently eliminated, with a danger zone on our frontiers in Kashmir, with the Communists trying to grab power by any means and all means at their disposal and with the R.S.S. people with a popular slogan of Indian culture and Hindudom on their lips trying to capture political power, it is a dangerous thing to trifle with the Central Government. Seeing all these things our leaders with a foresight born of experience, of the past and a proper appraisal of the future, have said that the residuary powers of this nation should rest with a Government which is strong in the Centre. Not only that; there is another personal element on which the whole effectiveness of this Constitution rests, namely, the Prime Minister of this country is made all-powerful. You have given every power to the leader of the majority group in the Central Legislature to work this Constitution, to work this democratic Constitution which you have prepared and it all depends on the personality of the Prime Minister exercising enormous powers. The Congress, though it obtained independence for this country, though it is the majority party running the Government of this country, it was not mean or had the intriguing nature to incorporate in the Constitution any provision that would perpetuate its power for some time to come. They have divested themselves of such selfish motives and created an instrument in which any party that has got the largest support in the country can take power and run the administration of the country and fashion it as it likes. But still we believe that the personality of our Prime Minister and our Deputy Prime Minister are indelibly impressed in the Constitution and it is the fond hope of millions of people that they will be spared to us for many years to come to see that the power that is gained by our Nation is consolidated in the best interests of the poorest man in the street whose protection this Constitution envisages.

With regard to Fundamental Rights I need not say much, since every right is not an absolute right. Every right wherever it is enjoyed is always hemmed in by considerations of public policy and public conduct and also by the safety of the State. If every man wants to exercise his right and take advantage of it without taking any responsibility for the welfare of the State, he must be shown the place to which he should rightly go. That is the only exception. Where with regard to Fundamental Rights has this Constitution not made full provision? This Constitution enables all loyal citizens to carry on their avocations and professions peacefully and gives them a guarantee against the meddlesome elements in the country who want to exercise undue and absolute rights at the expense of others.

In this connection one happening has to be mentioned. I was surprised sometime ago to find a reputed ex-Judge of the Patna High Court presiding over a Civil Liberties Conference held in Madras and attacking all the Congress Governments from the Centre down to the provinces. He almost ran amuck in his attack of the Governments in the name of civil liberty. His speech was full of abuse of constituted Governments and it was quoted by communists.. Even the communists would not have indulged in civil liberty in a more extreme manner than that ex-Judge of the Patna High Court. That is not civil liberty. Every citizen must have some sense of responsibility for maintaining tranquility in the country. That alone will enable the people of the country to enjoy the fruits of freedom. Under the cloak of civil liberty, you should not allow even these champions of civil liberty who retire after a lifetime of service under a foreign slave-master and now come in full glory and vigour in support of civil liberties to speak as they like. It must be pointed out to them that they have a responsibility to the State.

[Shri Thirumala Rao]

Sir, I do not want to take much of the time of the House, though I want to say one other thing. Situated as we are, we are in possession of a Constitution which can be turned to best account by the persons that work it by the legislators and by the Ministers that these legislators would choose. I say that it depends mostly on the Prime Ministers for the next few years of this country to see that the greatest benefit is derived from this Constitution. We have rightly selected, Sir, the Chakra as our emblem, as the historic reminiscence of the period of Asoka. Describing the meaning of this Chakra, Rhys David the famous Orientalist has said that this Chakra is intended to send rolling the Royal Chariot wheel of universal empire of truth and righteousness. If any country which departs from the essential moral principles on which it professes to stand it has no future. But this country in keeping with the ancient traditions and ideals has rightly chosen that Chakra which is called the Dharma Chakra of Asoka and Mahatma Gandhi has blessed this Chakra. With his spirit hovering over this nation and with this emblem on our flag, it is the duty of this House and the leaders of the future to uphold the Congress principles and fulfil the destiny of this Nation.

The Assembly then adjourned till Ten of the Clock on Wednesday, the 23rd November 1949.

CONSTITUENT ASSEMBLY OF INDIA

Wednesday, the 23rd November 1949

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.

DRAFT CONSTITUTION—(*Contd.*)

Shri Ari Bahadur Gurung (West Bengal: General): Mr. President, Sir, I associate myself with my colleagues in congratulating the Chairman of the Drafting Committee for having brought this stupendous task to a successful conclusion. I have only a few observations to make. Firstly, the criticism of the Constitution that it does not provide for the establishment of Socialism is as irrelevant as the complaint that it is likely to open the way to dictatorship is futile. The real test of democracy is to give the right to the people to decide for themselves the nature of the Government they would like to have. The question of dictatorship or Totalitarian Communism will depend entirely upon the manner in which the People will work the Constitution. The Constitution will be subject to a continuous series of modifications, according to the will of the people. Such are the provisions already provided in the Constitution. Sir, I personally feel that a Constitution is something of sacred character which inspires future generations. It is the embodiment of the living faith and philosophy of life of those who framed it. To judge this, one has only to look at the Constitutions of different countries. In other words, a Constitution is the reflection of the supreme will of the people as to the form of government they want. Although the Constitution will become the law of the land, there will be nothing sacrosanct about it because it will be subject to modifications as I said before. For all intents and purposes, under the existing circumstances, this Constitution is a model one to suit the various needs of the people living in India.

I Would now like to refer to article 5 relating to Citizenship. The community to whom I belong consider this of vital importance, and I feel it is my duty to mention here that one-third of the total population of Gurkhas have come and settled down in India. According to census figures, out of one crore, about 67.5 lakhs are in Nepal and the rest have settled down in India and the Gurkhas remaining here are most of them descendants of those soldiers who fought in many battles in India. We claim the same right of citizenship under article 5, provided we fulfill all the obligations laid down therein. Sometime ago in the beginning of the year when I spoke about the Gurkhas, I said that they should be classified as a backward community. My point is that there should have been a special provision for the backward classes of people with regard to the services, but unfortunately under the Constitution such privileges are given only to the Scheduled Castes, the Tribals and Anglo-Indians, even though article 16, para. (4), provides that "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, which, in the opinion of the State, is not adequately represented in the services under the State." In other words, it gives by one hand and takes away by another. This is the greatest injustice done to people who are very backward, though they do not have the privilege of being classed as Scheduled Castes or Tribals. I sincerely hope that the

[Shri Ari Bahadur Gurung]

future Parliament, whose members will be elected an adult franchise, will amend this omission. About ninety per cent. of the total population of India are backward and these people in future, through their representatives, will see how this Constitution works.

There have been strong criticisms about the constitution providing a strong Centre. I feel that under the existing circumstances there is no other alternative than to have a strong Centre.

With regard to article 3 and 4 read with article 391 of this Constitution, I have some observations to make on West Bengal. As you know, Sir, after the Radcliffe Award the two Districts of Darjeeling and Jalpaiguri have been entirely cut off from West Bengal. In view of the defence of the northern frontier India, this is a matter that calls for immediate attention of the Government of India. With the imminent fall of the Kuomintang Government in China, Tibet the next-door neighbour of India is, according to reports, becoming the scene of Communist intrigues. The State of Sikkim and the District of Darjeeling connect Tibet with the Indian Union, and Assam, the eastern-most frontier of the Indian Union, is like with the rest of India by a narrow strip of land consisting of portions of Darjeeling district and Jalpaiguri. These areas as also the State of Cooch Behar, in view of their strategic importance need to be strengthened and consolidated.

The Districts of Darjeeling and Jalpaiguri which are the northern-most districts of West Bengal have no contiguity with the rest of West Bengal, East Pakistan having come in between. This circumstance gives rise to many administrative inconveniences in ordinary times and more so during a period of emergency. Being a Frontier region such inconveniences if allowed to continue longer are fraught with grave dangers. My object in making this observation with regard to these two districts of West Bengal is this that if we look at the map of India, we find that there is only a narrow strip of land, connecting Bihar with Assam, that is the districts of Darjeeling and Jalpaiguri. Pakistan points like a sword towards the heart of India. If there is to be any trouble, unfortunately, God forbid, especially between Pakistan and India, Assam can be isolated within a very short period, the northern parts of Himalayas being inaccessible; and these are the territories that need the immediate attention of the Government.

Shri K. Hanumanthaiya (Mysore State) : Air travel is available.

Shri Ari Bahadur Gurung : Thank you very much for your suggestion but that all depends on the strength we have. As a matter of fact in modern warfare the air has played a very important part in bombardment. The last battle has been fought and won on the land. If you read the history of all wars, especially the first war and the last war, it was actually the infantry which decided the whole fate. In the last war it might be the atomic bomb on Hiroshima that decided the fate but that was a cruel thing and if a war has to be fought, it must be fought on the land. I feel Sir, that should an emergency arise the Commission that is likely to be appointed should look into these matters stated above, because these two districts of Darjeeling and Jalpaiguri have been completely isolated from the rest of West Bengal. Now sending goods to Darjeeling from Calcutta one has to send through Bihar. Due to devaluation another difficulty has arisen, namely the fare (1st Class). From Calcutta to Siliguri is about Rs. 50 but from Siliguri to Calcutta one has to pay Rs. 72 and there is lot of difficulty in the transport of goods from Siliguri down to Calcutta. Within the same province we have such difficulties, I, therefore, suggest that something has got to be done with these two districts; either they have got to be linked with the rest of West Bengal or some separate arrangement has got to be made. These are the observations that I have to make. Thank you very much, Sir.

Giani Gurmukh Singh Musafir (East Punjab: Sikh): *[Mr. President, I endorse the views of my friends without any reserve and hesitation that this Constitution of our free India is undoubtedly a grand document. To me it is an ocean and I believe that it is difficult for every driver to bring out valuable pearls from its depth and to know their intrinsic value. Taking into consideration the circumstances under which this document has been formulated, it is necessary to point out that it was very difficult to frame such a fine Constitution. Many questions had cropped up and it was very hard to solve them. For instance Minorities' problem was of utmost importance. Under the conditions prevailing in the country solution of this problem was an uphill task. But in the manner in which it has been decided is certainly praise-worthy. Separate electorate was a curse which had blocked the path of our country's progress. Whenever the solution of this question was taken into consideration, it created an embarrassing situation and each effort for solution made the problem more and more complex. The disease increased with treatment.

Doctor Iqbal, the well known poet of our Punjab has said:—

*Mazhab nahim Sikhata apas main bair rakhna
Hindi hain ham watan hai Hindustan Hamara.*

It means: "Religion does not teach to quarrel among ourselves. We are Indians and India is our motherland".

But the principle of separate electorate shattered the dream of the poet. Nay even those who opposed it were forced by the circumstances which the principle of separate electorate had engineered in the country—to support the schemes of separatism. In his concluding lines the poet (Dr. Iqbal) being confused and confounded gives an opportunity to the Britishers. He says—

*Nishan-i-barg-u-gul tak bhi na choar is bag main gulchin
uri qismat sai razim araiyan hain baghanum main.*

It means: "O' flower-picker, what to speak of the flowers of our garden, do not leave even a single leaf because you are so lucky that we gardeners are ourselves flying at each other's throat. Therefore you have got an opportunity to make our garden desolate and rob it of all its leaves and flowers". In our country, separate electorate had always been the source of disruption and religious feuds. Now separate electorate has been removed with great courage and to my mind it is one of the fundamental virtues of this Constitution. Separate electorate has been withdrawn from this Constitution and no reservation has been given on religious basis. I think that these steps will help us in making our ideals loftier. I have no hesitation in saying that the solution of this problem appeared to be perplexing because the minorities were suspicious and obviously the solution of this problem appeared to be very difficult. Yet it was solved because of the personal influences and decisiveness of our Prime Minister. Pandit Jawaharlal Nehru. Our Deputy Prime Minister, Sardar Patel and Shri Rajendra Prasad, President of our Assembly. Moreover it is the result of the influence of our Maulana Abul Kalam Azad and all those leaders who have fought for the freedom of this country. Minorities had faith in them and this is the result of their joint efforts in solving this problem. The curse of separate electorate has been removed from our Constitution. Moreover the problem of reservation has also been solved. Sardar Patel was Chairman of the Advisory Committee which was appointed for the solution of minorities problem. Sardarji's influence; his hold; his statesmanship; his firm resolution got the upper hand and the problem of separate electorate was solved. I repeat that this is one of the greatest virtues of this Constitution. It has made our Constitution much more brighter.

*[] Translation of Hindustani speech.

[Giani Gurmukh Singh Musafir]

I would like to add a few words more regarding this Constitution.

It is the Constitution of free India and as such it is connected with the people. Therefore this should not be considered as a mere Constitution; because we have also to raise the morale of our people through the Articles this Constitution; hence the difference between this Constitution and the constitutions of other types is necessary. Englishmen had their way of dealing with such problems. If they did not like to confer a right on the people then in that case, they used to give from one hand and take away from another after making verbal changes here and there. At the end of substantial Articles they used to add such proviso and conditions which rendered them ineffective. If there is any such defect in our Constitution, then it should be removed. Some Members have criticised the Fundamental Rights and their proviso. I think, perhaps due to official reasons certain provisos were considered unavoidable. But I would like to say that such Provisos should not find place in the Constitution. For instance the right of acquiring, holding and disposing of property has been conferred in the main clause but according to the condition which has been laid down in article 5, it shall not affect the operation of any existing law. Whether this clause affects any province or not, but it does affect our Punjab. Land alienation Act is prevalent in the Punjab since a very long time. According to this Act if a man actually tills the soil but does not belong to the zamindar class, he cannot acquire lands. It was proper that this restriction should have been removed. But this has not been done. The proviso attached to this Article has created confusion and it is not clear whether this restriction has been removed. On this point clarification is necessary. Punjab and the zamindars of Punjab have been very much affected by this clause; for those who have money cannot acquire land due to this restriction. The result is that those who want to dispose of their properties do not get reasonable price. Punjab is the home of middle class zamindars. Due to this law there is possibility that small zamindars will become smaller and big zamindars will become bigger. I cannot dilate on this point, because the time at my disposal is short. All that I can say is that this state of affairs is unnatural, and this restriction should have been removed.

There is yet another point. In article 22, clause (3), sub-clause (B), which relates to Fundamental Rights, system of detention has been retained. To my mind, in the Constitution of free India as has been pointed out by Pandit Hriday Nath Kunzru—the system of detention should not be retained. We want to inspire the people with confidence. We want them to feel that the Constitution of free India is quite different. But such steps shall not inspire them with the beliefs that now situation is altered. They shall not believe that they are free and that a Constitution of free India is being framed. To my mind none should be detained unless he has been tried in a court of law. Now, I would like to say something regarding Directive Principles. These are great principles and they are consistent with the high principles of our Congress Government. The pledges which we had been giving to the people, have been incorporated in this Constitution. But in Article 37 they have not been made enforceable in a court of law. If owing to the expediencies of State, retention of Article 37 is essential, then it is better not to include the chapter on Directive Principles in the Constitution. If it is not possible, then I would like to say with all the emphasis at my command that these Directive Principles should be inserted under the Chapter on Fundamental Rights. I would like to say one word, regarding education. The provision for “free and compulsory education for all children until they complete the age of fourteen years” given in the Directive Principles should form the part of Fundamental Rights. There is yet another provision in which

children of tender age for whom avocations are unsuited to their strength are protected. This is important and should be inserted under the Chapter of Fundamental Rights.

Lastly I would like to say something relating to language. The language question was hold over for long. I am glad that at last it was settled and we succeeded in taking a decision. I do not think after this decision, it is proper to retain English for 15 years. To my mind it is the manifestation of our slave mentality. We have achieved our freedom ; but we are like that bird which has lost its sense of freedom due to its long confinement in a cage. Now the cage has been torn into pieces, but as we have lost our sense of freedom, we are still under the impression that we are in prison. I am not opposed to English because it is a bad language. I am opposed to it, because it does not look nice that we should retain this emblem of slavery in our country for long. After we have decided to have one national language, retention of English for such a long time would mean, paying a very high price for the consent of those countrymen of ours who have accepted one national language being compelled by persuasion, reasoning and love. Hindi has already been declared as our national language and duration of 15 years can be regarded as the life of a generation. I agree with Seth Govind Das that our Constitution should be in our national language and it should be regarded as authentic. In this connection Babu Ram Narain Singh has asked a pertinent question "Is this Constitution being framed in India or in England ?". To my mind, the Constitution should be framed in our own national language. We should use this language from now and if it is not possible to do so, then the maximum period for its adoption should be reduced to 5 years. Such a course shall be source of consolation for us and it will help us in getting rid of our slave mentality quickly and it will enable us to do everything through the medium of our national language.

I would like to add one word more. Sardar Hukam Singh and some other friends have said that deletion of the provision relating to reservation in services has created dissatisfaction among the Sikhs. As I have said, the minorities have given their common consent to the abolition of separate electorates but I must confess that the Sikhs and other minorities in some places are dissatisfied because reservation in services has been removed. But to incorporate such a thing in the Constitution would have been contradictory to other Articles. Now when the reservation has been abolished, every man shall be appointed on his merit and thus everybody will be inspired with the desire to make himself accomplished. 'This step has placed a responsibility on the shoulders of the Majority Community, and minority communities also shall have to feel the necessity of acquiring capability and capacity.

One word more and I have finished in preparing the draft, Dr. Ambedkar and members of the Drafting Committee have worked very hard. They deserve our congratulations for preparing this Draft within such a short time and under adverse circumstances. We shall be failing in our duty, if we do not pay our debt of gratitude to our leaders and comrades. I mean greatest leader Mahatma Gandhi and those innumerable unknown warriors who have made sacrifices for the freedom of this country those who have left behind their wealth, their homes and their all in Pakistan and thus did their best for the freedom of this land. I agree with Shri Jaspat Rai Kapoor that attention should also be paid to the refugee problem, the services rendered by them for the cause of the country is praiseworthy. We cannot succeed in enforcing this Constitution unless they are satisfied. With these words, I support this Constitution and I think it will be, acceptable to all. In the circumstances it was not possible to frame a better Constitution.]

Shri R. V. Dhulekar (United Provinces: General) : Mr. President, Sir I am here to support the Resolution that has been placed before this House by Dr. Ambedkar. The Constitution has been discussed at very great length in these three years and therefore it is now too late to point out all the defects and the great points that are in the Constitution. I am satisfied that the Constitution on the whole is a very good one. Everybody knows that milk contains more than 75 per cent. of water and if the balance is good, it maintains our body and strengthens it. It gives a longer life. Therefore I shall not try to dilate upon the defects. They may be more than 75 per cent. I do not mind but I only mind that if the balance left is on the credit side and if the Constitution that we have prepared contains all the substances that are necessary for the living being, that is India, then I believe that it is a good constitution. I shall therefore give attention to the different points that are in favour of the Constitution and I lay on record that these points that I am going to submit before you are sufficient to guarantee to this country a long life of prosperity and happiness in this world.

The first point is this, that we have cleared the ground for establishing a Secular State. I believe that religion as followed in India has always been secular. It may seem contradictory but I shall say that in India we have never followed any person and we have never followed any Book. We have never followed any cult; we have never believed in any 'ism'. The Vedas and Upanishads all declare that never follow any single person or a Book. Even in the Veda, wherever we find Manthras, holy scripts, we find that any person who has ever visualized any great truth—that manthra goes by his name. We have never been bigots in this country and we have never been fanatics. I may say that people say that Buddhism was turned out of India. I say no—Buddhism as an 'ism' only walked out of India but all the good points in Buddhism remain. Animal sacrifice to a great extent had crept in Hinduism. The influence that Buddha left was that animal sacrifice and bigotry disappeared from India. I hope, Sir, that with the march of time, Islam will also walk out of India in the sense that no fanaticism will remain in India, and bigotry will disappear from amongst the Muslims of this country, and so I am happy at the thought that we have laid down the principle that this country will not be governed by any person, religion or cult or any ism at all.

The second point which is a very great achievement is adult suffrage. Every person who is twenty-one years of age, who does not possess any of the disqualifications enumerated in the Constitution, has an opportunity of rising to the Presidentship, the highest honour that this country can give. And that is a great thing. A man walking in the street can rise to the greatest height that India can give him.

The third point is that we are going to have village panchayats, which is an extension of democracy to the lowest ground. For some years we had democracy in India, but the common man never felt that he possessed any democracy. As we extend our democracy to the villages and establish the village panchayats, and ask the common man to govern himself, I believe that India will be far better than England or America.

The fourth point that I am going to say in favour of the Constitution is the introduction of joint electorate. The minorities question has been washed away. There are no separate electorates. Every human-being living in India, who is born in India, is born equal, and because he professes a particular religion or cult, he cannot claim any favouritism from the State. I am happy at the thought that the great blemish, the blasphemy left by the British has been washed away.

Then the fifth point is that the Indian States have been washed away. I am happy that the princes, the ruling princes have been magnanimous enough, and have been great enough to sacrifice themselves. I know that but for that sacrifice, our Honourable Patel would not have been so successful, and therefore, I say that when I praise the sagacity and firmness of Sardar Patel, I also praise those sons of India, the rulers, the princes, who sacrificed themselves and came into line with the common man of this country.

Then, Sir, the sixth point is international peace. We pray for international peace. We have always believed in it, and I am proud of it when I say that India has never invaded any country outside its own boundaries, and I am happy at that thought. Like Alexander the Great or the great robber, no king of India marched on another land. Like Nadirshah or Mahmud Ghazni or Mohammad Ghorī, no king of India stepped out of this country for any conquest or territory. I am happy at that thought. Therefore, when we lay it down that international peace is our ultimate aim, I may say that the whole world must believe us. When England or America says that they want peace, they are not believed. Everybody is suspicious of them, because these people have never proved in their life that what they said was true. England and other countries have gone out of their countries and invaded other countries raided them and robbed them. Therefore, when they say today in the U.N.O. that they love peace, they are not believed. I say, Sir, that India will be believed and every man in the world will believe when we say that we want international peace. When Pandit Jawaharlal Nehru went to America, why was he given such a great ovation? Why did people throng in thousands and lakhs to greet him? It was because he had a great history behind him. They knew that he was coming from a country where Yagyavalkas, where Mahatma Gandhi, Ramkrishna Paramhansa and where Swami Vivekananda and Sir Rabindranath Tagore were born. These men went outside India with the mission, not of the sword, but with that of peace. And therefore, when Pandit Jawaharlal Nehru went to America, and he said that we stand for peace, he was believed.

Now the seventh point in favour of the Constitution is that the residuary powers will now rest in the Centre. That is a very good thing. In the beginning, there were the words "India shall be a Union". I say that that word "Union" is not a happy word. Union always means and connotes that there was previous disunion, and therefore we are going to unite now. I say that it is not a happy word. But when we came to the residuary powers, and our good sense prevailed, we put that the residuary powers should be concentrated in the Centre. This means that we will have a strong centre and India will always remain undivided and strong.

Then, Sir, the eighth point is the adoption of Hindi language as the national language of India. Some people may say that for fifteen years English language is going to rule. Others say, that there has been injustice, because Hindi language has not been introduced from today. But I say that the resolution that has been passed by us, is a great triumph. The British walked away from India although they had remained in India for over two hundred years. Similarly, I can assure all my friends, the lovers of Hindi, that the English language will also walk away from India within one or two years, and after five years it will be very difficult to find a letter read in the mufassils or in the districts written in the English language. I am quite sanguine about it and therefore, I feel that whatever restrictions have been placed, they are not such that Hindi will not rise to its rightful height.

The ninth point that I urge is that some people say that there are no points in favour of socialism or communism. I tell you, Sir, that any 'Ism' however good it may be, creates fanaticism. Every 'Ism' is only a synonym for fanaticism

[Shri R. V. Dhulekar]

and bigotry. If our Constitution had placed that socialism was our aim. If our Constitution had placed that Communism was our goal, I assure you sir, that within four or five years, thousands of fanatics would be going about the country and saying that anybody who oppose this Constitution will be killed and murdered. Why do not you go to Russia and see ? Anybody who opposes Communism stands condemned and he could be killed by anybody. So by not placing any "ism" in our Constitutional aim, we have done a very wise thing; India is no believer in any "ism". Therefore I am happy that we have walked clear of these "isms". We do not believe in any "isms". We believe in our personal wisdom, in our combined wisdom, in our nation's wisdom, in our world's wisdom. We always feel that if we 20, 50 or 100 people sit together, we shall create something which will be better than any "ism"—it may be future. past or present.

The tenth point is this. This Constitution gives a full play for democracy. What is democracy? I define it, in one word. Democracy is accommodation. Any person who does not understand this small definition of democracy, cannot be a democrat at all. Any person who feels dissatisfied after going out of a Committee and harps upon the fact that he was not heard and keeps a grievance going on, I say that he is not democratic. When 10 persons sit together and apply their mind, they either agree or disagree. If they come to a certain conclusion, I think and believe that it is a democratic resolution and it must be obeyed. Therefore, I say, when we 300 and more persons sat together, applied our mind and produced a Constitution—I may not have had my resolution passed and other people may feel that their resolution has not been passed, that is not the point at issue—it is then the result of combined attention and as such it must be obeyed. It is sacred.

Then there is the post of the President. This is a very great thing. In our olden days also and in our religious books we always find that whenever we perform any religious ceremony, we first of all always invoke Ganapati, the Mighty Lord of the Universe and ask him to sit down and watch our functions, guide our deliberations and our religious ceremony. Then we perform the ceremony and in the end we say

गच्छ गच्छ सरश्रेष्ठ
ईष्ट कार्य प्रसिद्ध्यर्थं पुनरागमनाय च ।

Translated it means: You have performed the desired work, kindly so, but come again.

So following that holy tradition, I say, Sir, that you, Mr. President, have guided our deliberations and you have given us this Constitution and now I pray, Sir, that as the President of the Constitution, Assembly you go, but as the President of this Constitution, you please come :

I believe that the whole House is with me that you will be re-elected to this high post.

Mr. President : You had better not to refer to such matters.

Shri R. V. Dhulekar : In the end, I have to place my heartfelt thanks on record to you, Sir, the President and Dr. Ambedkar. The work that was before us was a very great task. Dr. Ambedkar has performed a very great work. I would not say Herculean because that is a very small word. He has performed a task worthy of the great Pandava Bhim and worthy of the name that he has—Bhim Rao Ambedkar—He has certainly justified his name—Bhim Rao—and he has performed the task with clarity of vision, clarity of thought and clarity of language. Throughout, he was very clear. He always tried to

understand the opponent's view and he always tried to accommodate him, and he always tried to put his own views in the most clear language. We are very grateful to him.

I am also very grateful to our Congress President—for some time our Mr. Kripalani and later on our Honourable Pattabhi Sitaramayya. As a Congress party man behind the scenes he had to conduct so many meetings and he conducted them so well that the Congress people could come together and produce a constitution for the acceptance of the whole of this House in such a beautiful manner. Therefore, I am personally beholden to our Congress President, Pattabhi Sitaramayya, and our grateful thanks are also now due to all the Members who have co-operated with us.

In the end, Sir, I wish to place my obeisance to the great Mahatma Gandhi, the Father of the Nation. With these words I shall finish

Om shantih, Om shantih, Om Shantih !

Dr. P. K. Sen : (Bihar: General.) : I feel that I owe it to myself and to this August Assembly to offer a few humble observations at this momentous stage when we are ushering forth the Constitution to the nation and to the world at large.

Up to now, this Constitution has been a paper document and it will remain so until the 26th January 1950. Then will be the moment when it shall spring into life, for it is not the Constitution on paper that will rule and regulate the lives of the nation, individually and collectively, but it will be the spirit of the people behind it that will really regulate, that will really bring about the democracy which we are all trying to attain.

A great many things have occurred on the floor of this House which may seem to indicate that there has been a departure from that spirit of union, which alone can lead to success in democracy. I be to differ. The bitter controversies that have taken place on the floor of the House, the great disputes which have arisen from time to time, only show that there are differences of outlook, of views and opinions, but they do also point to the fact that all have united together in a spirit of mutual understanding "compromise" if you like so to call it and they have evolved together in a spirit of harmony, this Constitution of 395 articles. When it springs to life, when it starts operating, it shall become a live being and therefore as all living organisms are, it shall be subject to growth and development. Let us hope that it shall never be subject to decay, but that this growth and this development will go alongside of the growth and development of the people. The people and the people alone can make good this Constitution, can make it really applicable to the needs and requirements of the people.

A great many things have been said here in connection with this Constitution. But I do feel that at the back of all that, one can find that there is more or less accord and not discord. It has been called a "compromise" Constitution. Well, "compromise" is really the essence of wisdom. If you can see things from the opposite point of view also along with your own point of view, it is only then that you can possibly unite not only to frame the Constitution but to regulate the lives of the nation. Therefore, if it is a compromise Constitution, I regard that as a matter of pride. You feel that there are so many things that have been done which are entirely of a revolutionary character. You feel that you are on new ground altogether and if you have been able to agree on those fundamental points, then the journey will be a triumphant march.

First of all, we have abolished untouchability by law.

Then comes the disappearance of the Princely Order and the wonderful work of integration of all these States.

[Dr. P. K. Sen]

Then comes the abolition of special electorates, the abolition of reservation of seats and the wonderful phenomena of the willing surrender of the rights of certain minorities with a view to abolish reservation of seats. The reservation of seats, no doubt, has been maintained in certain specific cases and for a limited period, but that is understood and accepted by all of us unanimously as a just and good provision.

Then comes the adjustment of the relations between the Centre and the different units or provinces or States, and we find that there again, there is a triumph although there may be differences of view-point; some people are inclined to think that the Centre has been given too much power, that it might really end in dictatorial supremacy; some on the other hand are inclined to think that more power should have been given to the Centre.

But we have, as I understand it and as I submit earnestly, arrived at a point when, again, it is the working of the thing which will really justify the content of the Constitution. One after another, honourable Members have come forward on the floor of the House to testify to their belief and faith in that proposition, namely, that it is not the Constitution alone that can possibly justify itself, but it is the Constitution and the people acting and reacting upon each other that will lead to its ultimate justification or condemnation.

Then, Sir, I shall draw special attention to the determination of this House, notwithstanding certain points of difference, unanimously to adopt a common language for the whole of India, may be with due regard to mother tongues, may be with due regard to other languages prevailing in certain particular tracts of the country; but the determination to have a common language and a common medium of expression for the whole of India is absolutely unanimous.

We come next to adult franchise, and before we launch our bark on the uncharted ocean of adult franchise, we have to be careful as to how to proceed. After all, ours is an infant democracy and we have yet to know the shoals and sand banks and all the risks and perils of the voyage. We have yet to know how to find out our coastline when we are in danger and therefore, it is extremely necessary that there should be on the part of the Members of the Constituent Assembly and also of all others a desire to work in such a manner that this Constitution, based upon adult franchise, may really not only turn out a success but may be an example to all the world.

Reference has been made more than once to the fact that the panchayat system should have been the basis, that the old idea which the Father of the Nation had expressed very explicitly, namely, that there should be the panchayat at the bottom and therefore the democracy broad based in panchayats should rise to a cone and that cone will be the perfection of democracy, that this idea should have been followed. I do not see any reason why that should be barred even now. Adult franchise is a thing, as I have said, uncharted and it is by proper navigation that we have got to find out where the haven of safety lies. Gradually, it is this panchayat system which I doubt not will come, in order that it may be the basis of the democracy that we are going to usher forth.

Lastly, there are several things, a great many details, that come up to my mind, but I know the time is valuable and I shall try to be as brief as possible. What, after all, should be our guiding maximum? What should be the armour of safety with which we shall fight the world on this basis of democracy? There again, the Father of the Nation has more than once, throughout his whole life, in fact in every act, in every word that he uttered has laid down the lines—Truth and Freedom. We cannot be true to ourselves if we are not true to others. We cannot be freely individually unless every individual regards and respects the freedom of his neighbour. If we realise truly the essence of wisdom in this

maxim of truth and freedom, it is only then that we shall succeed, it is only then that we shall be able to make this Constitution a live Constitution. As reference has been made to it, I cannot help repeating that there are, trained soldiers in truth and freedom amongst us. There are men who have sacrificed their all who can be our guides, our pilots, and who can therefore steer us to the right haven of safety. I do not exclude from these those who in name belong to a different party as it were—there is no party here. I include in this band of soldiers the Drafting Committee headed by Dr. Ambedkar. These honourable Members have worked unstintedly and have in every possible way served the Constituent Assembly in a manner which entitles them to our utmost gratitude and I cannot help expressing those sentiments at the present moment. Thanks are also due, Sir, to you, as have been expressed every time by every Member—it may sound a repetition, nevertheless it is unavoidable. The manner in which you have given perfect freedom frankness and opportunity for every man who wishes to contribute to the debate, entitles you to our sincere gratitude.

There is one thing with which I shall conclude. It has often been referred to here as a blot on the Constitution, namely that all contact with God or religion has been as it were abandoned by it, as if it is a godless Constitution, as if by calling it a Secular Democratic Republic it has actually become secular or godless. I beg to submit that this is a misconception. We have not banished religion by which I mean the innermost faith of man in a Providence that shapes our ends and our personal relationship between us and our Maker. It has not banished religion in that sense. It has banished religions, that is to say the conflict between one religion and another. But if once it is believed, once it is truly appreciated that all religions are true, that not only is there an essence of truth in all religions but that all religions are divinely sent and dispensations of God, can there be any difficulty whatsoever, can there be any conflict whatsoever between one religion and another? And if that comes to pass, when the nation realises that, the word “secular” may in due course even be removed from the Constitution. For then it will be no longer necessary in the exigencies of the case in order to imply, in order to proclaim that there shall be no preference given to any religion, any faith, any belief, any form of worship, it has been found necessary to call it secular. But I truly believe that the Providence that shapes our ends is over us and will guide the destinies of the nation through this very Constitution which is called secular only in name. If there is the sense of mutual understanding, of compromise if you please so to call it, of mutual accommodation, we shall go together. If there is difference in fundamentals, it were better that there should be conflict between the two parties—without that perhaps there can be no good coming out of it. And if there be conflict unavoidable on fundamentals, on essentials, on unavoids, if there be conflict we need not worry for even between the fight of the gods and the demons, as we call them Suras and Asuras, even out of that fight came up ambrosia and nectar and the poison that came out was sucked up by Nilakantha in order that he might make his creation poison free. Do we not believe that today when we are on the point of ushering forth this Constitution the same Providence which is hovering over us is present here, and if there be any danger, if there be anything untoward, there is He to take up the poison, to make this nation poison free.

Shri B. P. Jhunjhunwala (Bihar: General) : Mr. President, Sir, there have been various criticisms of this Constitution and one of the criticisms levelled against the Drafting Committee is that they have done nothing more than adopt the Government of India Act of 1935. If this criticism can be levelled against the Drafting Committee, I should say it is most uncharitable. On the other hand, I would say that before adopting any article the Drafting Committee has taken great pains to go through all the Constitutions of the world and looked into all the amendments with great care both from the point of view of theory

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as well as from the point of view of their practical application. If they have not accepted any theories it is not because these were not in the Government of India Act 1935, though those theories were applicable and right, but because they could not be practically applied here under the present condition. I have heard people talk that nothing will come out from the administration under this Constitution because it is nothing but the Government of India Act of 1935, and we have seen the result of its administration. Sir, I want to tell them that such a conception is due to their wrong approach, very wrong approach. Why should we give them up if there are good things in anything the British Government had done? They might have had different objects, but whatever they did, outwardly, there was nothing much to be said against it. We have simply to change our approach and object and then work the Constitution and we shall find that all that is provided in our Preamble will be attained, but if we proceed with some sort of prejudice then it will be difficult. Sir, the Drafting Committee has taken great pains in going through, as I have said, all the constitutions of the world and have presented to us a Constitution under which we can carry on most conveniently as we are accustomed to.

The other point that is being discussed and criticised is that much more power has been given to the Centre than necessary and that all talk of provincial autonomy has been forgotten and power has been taken away from the provinces. This is also very wrong. Under the existing conditions and circumstances of the country and the world forces which are working at present it was very necessary that this much power should have been taken by the Centre. Sir, behind the framing of the Constitution we had our leaders who had effaced themselves and who never thought that in this life they will realise their dream of independence and see that the people of India gained what was necessary for their happiness and future prosperity. Sir, such people are now at the helm of affairs. If they have decided to, give more power to the Centre it is not because of their love for power. They have kept only one thing in view and that is the good of the country and the happiness of the people. Sir, it is not the form of Government that matters. The thing that matters is as to how the country is administered. When we have got such people at the helm of affairs who, as I said before, had effaced themselves, had never thought that in this life of theirs they will have any power or that they will see their country in this prosperous condition, we should have no apprehension that anything will be done by the Centre which will be against the interests of our country. History shows that even under the monarchical form of Government we had monarchs who respected the feelings and liberties of the people. Therefore there is no reason why we should have any apprehension that anywhere in the provinces or in the Centre our liberties will be curtailed. If any restriction is imposed on our liberty at any time I have no doubt that it will be for the good of the people that it will be so imposed and not for mere satisfaction of exercising power.

Sir, I do not believe in the theory propounded here that everything should be centralised and that the whole country should be governed from the Centre. But I agree that powers should be given to the Centre so that in times of emergency they can be utilised for the benefit of the people. Sir, the Centre should have only such power as is necessary and cannot be exercised by its component governing parts, for the preservation of the unity and integration of the whole of India. Every other power should be, as much as possible, decentralised and given to the unit of a village or groups of villages what to say to Province. With that purpose in view, I had given notice of an amendment to the Preamble that 'after the word "Republic" the words "to be worked on the basis of autonomous village Units or groups of villages organised on the principle of self-sufficiency as far as practicable" be 'added. The other thing I had said in the Preamble was that the noble idea of self-restraint, simplicity and selfless work inculcated by the Father of the Nation, Mahatma Gandhi, should be introduced by means of an amendment to the Preamble. The object of the amendment was that when we are

going to have a democratic form of Government we should have as real democracy as possible by giving as much power to as small a unit as practicable so that the individuals composing the unit may have easy and ready remedy which is possible under village republic. By other amendment I wanted to introduce in the Constitution, guiding principles and forms of gratifications for our people to cultivate and possess, in the absence of which gratifications the other objective given in the preamble of the Constitution cannot be achieved. But this was not accepted.

Sir, regarding the village republic, I want to draw the attention of the House to one matter. I do not know whether it is the opinion of the Honourable Dr. Ambedkar or of the Drafting Committee as a whole that Dr. Ambedkar voiced while introducing the Draft Constitution for second reading :

“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 up on 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 Indian for the village community is of course infinite if not pathetic.” Then Dr. Ambedkar has given a quotation.

“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 destiny of the country; and why ? Their part in the destiny of the country has been well described by Metcalfe himself who says:”

Then further on, Dr. Ambedkar says :

“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 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 it 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.”

Sir, I only say that nothing can be more uncharitable and unjust to the villagers than what Dr. Ambedkar has said. Sir, it is not only uncharitable but it is not based on facts. Dr. Ambedkar himself admits that they have survived and they have kept the independence of India. He says that mere survival is not enough, mere survival has no value. What is the position today? We leave to go about begging even for our food stuffs. We would have been nowhere even with this Independence, but for preservation of village economy at least in matters of food, and it is only by introduction of village units in matters of economy that we shall be able to keep up our independence in real sense of the term and survive. It is because of the preservation of the villages that we survived and lived happily. This has been admitted by Dr. Ambedkar. Today we cannot

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produce what we want. Whatever wealth in the villages there was has been either taken away or whatever wealth in the form of land or in the form of cattle was there has deteriorated and vanished. The land which was there has become almost barren. Why ? Whatever manure was there, the manure in the form of bones, etc. which used to keep up the fertility of the land, was being exported because of the foreign trade. All the bones and all the dead animals, whatever was there, used to be left in the fields and used to decompose very slowly and keep up the organic value of the land and the fertility of the soil. Regarding cattle, when Lord Linlithgow came, he started a campaign for bullocks breeding, *i.e.* for good breeding. This lasted for about a year or so, but what happened during the war was that all the best cattle of the country were slaughtered for the military, for the preservation of the British Empire. When Dr. Ambedkar says that the villagers and the village republics did not take part in the preservation of the country, I would enquire of him as to whether he has read the history of the non cooperation movement. If he has read, he will know that the villagers responded very well to the call of our able leaders who effaced themselves and who went to the villages thinking that it is the villages who will bring independence to the country. The villagers played the most important part in the freedom struggle. It is most uncharitable to say that the villagers and the village republics have done nothing and that they have brought about the ruination of the country. It is not the village republics who have brought about the ruination of the country, but it is the other way about. It is the centre under the British rule which brought about the ruination of the villages which comprise 90 per cent. of the population of the whole of India; and has reduced the whole of India to a beggar's condition for their requirements. At that time of course at the Centre we were not there. There were other people. They had some other purpose to serve. Now the people of the country are at the helm of affairs and things should be different now. Sir, I would say that if we have to improve the economy of the country, if we have to see that the people are happy, we have, not only from the point of ideology but as a practical proposition, to organise the villages on the ancient basis. The village panchayats should be organised on the basis on which they used to work in the past. The economy of the country should be decentralised in that way. It is not possible under the present world for us to give up large scale production of things, but still our country's economy should be decentralised as soon as possible. The sooner we do it, the sooner we give attention to this, the better it will be for us. Sir, though it is not mentioned in the main part of the Constitution and the Constitution is not based on 'Village republics as units of the Centre; in the directive principles. It is provided that village panchayats should be organised with as much powers as possible, and I would request our leaders that this thing should be given effect to as soon as possible in a way as if it were incorporated in the Constitution itself. It is only then, Sir, that we shall be able to realise our real independence. With these words, I support the motion.

Shri Alladi Krishnaswami Ayyar : (Madras: General) : Sir, in supporting the motion of the Honourable Dr. Ambedkar for the adoption of the Constitution, I crave the indulgence of the House for a short while. This Constitution has been settled by the Constituent Assembly in the light of the recommendations of the various committees appointed by this House and the draft as originally submitted by the Drafting Committee and as revised later. In the course of my remarks, I should like to draw the attention of the House to what I consider to be the salient features of the Constitution bearing in mind the criticisms directed against the Constitution by some of the members. The Constitution as it has finally emerged, I submit, truly reflects the spirit of the Objectives Resolution with which this Assembly started its work and the Preamble of the Constitution which is mainly founded on the Objectives Resolution.

Firstly in spite of the ignorance and illiteracy of the large mass of the Indian people, the Assembly has adopted the principle of adult franchise with an abundant faith in the common man and the ultimate success of democratic rule and in the full belief that the introduction of democratic government on the basis of adult suffrage will bring enlightenment and promote the well-being, the standard of life, the comfort and the decent living of the common man. The principle of adult suffrage was adopted in no lighthearted mood but with the full realisation of its implications. If democracy is to be broad based and the system of government that is to function is to have the ultimate sanction of the people as a whole, in a country where the large mass of the people are illiterate and the people owning property are so few, the introduction of any property or educational qualifications for the exercise of the franchise would be a negation of the principles of democracy. If any such qualifications were introduced, that would have disfranchised a large number of the labouring classes and a large number of women-folk. It cannot after all be assumed that a person with a poor elementary education and with a knowledge of the three Rs. is in a better position to exercise the franchise than a labourer, a cultivator or a tenant who may be expected to know what his interests are and to choose his representatives. Possibly a large scale universal suffrage may also have the effect of rooting out corruption what may turn out incidental to democratic election. This Assembly deserves to be congratulated on adopting the principle of adult suffrage and it may be stated that never before in the history of the world has such an experiment been so boldly undertaken. The only alternative to adult suffrage was some kind of indirect election based upon village community or local bodies and by constituting them into electoral colleges, the electoral colleges being elected on the basis of adult suffrage. That was not found feasible.

Realising in full that the communal electorate and democracy cannot co-exist and that communal electorate was a device adopted by the British Imperialists to prevent the free growth of democracy on a healthy and sound basis this Assembly under the able leadership of our Prime Minister and Sardar Patel, has done away with communal electorates while making some special provisions to Scheduled Castes and Scheduled Tribes on the basis of joint electorates for a temporary period. As Sardarji has rightly pointed out in his memorable speech on the occasion, we have to demonstrate to the world, to the class of people who have flourished and who have been nurtured on communal claims, our genuine faith in the fundamental principles of democracy and in the establishment of a secular state without distinction of caste, creed or class.

Closely allied with the principles underlying the articles of the Constitution dispensing with communal electorates are the provisions in the Chapter on fundamental rights that every citizen shall have equality of opportunity in matters relating to employment or appointment to any office under the State. that no citizen shall on grounds of religion, race, caste, sex, descent, place or birth etc. be ineligible for or discriminated against in respect of any employment or office under the State. I am leaving them out of account the special provisions in favour of backward classes of citizens. In this connection it may be interesting to note that there is no such declaration in similar terms even in the Constitution of the U.S.A. The Fourteenth Amendment in the United States Constitution which was intended to remove the disability of the Negroes, has not, as experience has shown, served the purpose in the United States and the Fifteenth amendment deals only with the right to vote. Therefore, we may well claim that our Constitution is much more, democratic, much more rooted in the principles of democracy than even the advanced constitution of America. The abolition of untouchability is another notable step taken by this Assembly.

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The liquidation of a large number of Indian States scattered like islands over the length and breadth of this land, their merger with the neighbouring provinces, has been effected under the able leadership of Sardar Patel. In the result the States have been considerably reduced in number and either as individual States or as comprising groups of States they have been brought into the orbit of the Indian Union. Their Constitutions have been brought into line with the Constitutions of States in Part I and they have become units of the Indian Union on the same terms as the States in Part I so that we are in a position to say that all the units of the Union occupy the same position in regard to it excepting for certain specific transitional provisions. The Constitution does not permit the States which have acceded to the Union to secede from it. Their association with the Union is inseparable and they have become an integral part of the Indian Union. There is no going back. The magnitude of this achievement cannot be overestimated when we remember that the existence of a large number of such States has been put forward always as an excuse by the British Imperialists for the withholding of freedom from India. The Act of 1935 far from abolishing this distinction served to perpetuate the distinction.

After weighing the pros and cons of the Presidential system as obtaining in America and the Cabinet system of Government obtaining in England and the Dominions, taking into account also the working of responsible Government in the Indian Provinces for some years and the difficulty of providing for a purely presidential type of Government in the States in Part II, (now part IB) this Assembly has deliberately adopted the principle of responsible Government both in the States and in the Centre. At the same time the Assembly was quite alive to the fact that a good number of States in Part IB were unaccustomed to any democratic or responsible Government and with a view to ensure its success and efficient working in the early stages the Union Government is entrusted with the power of intervention while there is a failure or deadlock in the working of democratic machinery.

My honourable Friend Prof. K. T. Shah in expatiating upon the merits of the Constitutional system based upon the principle of separation, did not fully realize the inevitable conflict and deadlock which such a system might result in a country circumstanced as India is. The breakdown provisions in the Constitution are not intended in any way to hamper the free, working of democratic institutions or responsible Government in the different units, but only to ensure the smooth working of the Government when actual difficulties arise in the working of the Constitution. There is no analogy between the authority exercised by the Governor or the Governor-General under the authority of the British Parliament in the Constitution of 1935 and the power vested in the Central Government under the new Constitution. The Central Government in India in future will be responsible to the Indian Parliament in which are represented the people of the different units elected on adult franchise and are responsible to Parliament for any act of theirs. In one sense the breakdown provision is merely the assumption of responsibility by the Parliament at Delhi when there is an impasse or breakdown in the administration in the Units.

In regard to citizenship, the Constitution deliberately adopts the principle of single citizenship for the whole of India and departs from a dual citizenship, a common feature of many Federations. In this respect the Indian Constitution is in advance of some of the Federal Constitutions. It is hoped that that will lead to the consolidation of the Indian Union. The Constitution does not purport to enact a detailed law as to citizenship, but leaves it for the future Parliament of India to frame such a law.

The Constitution has accorded the proper place to the Judiciary as it should in a written and especially in a Federal Constitution. In the language of the Federalist, in America the complete independence of the court of Justice is parti-

cularly essential to the proper working of a Federal Constitution. The limitation on the different organs of State can be preserved in no other way than through the medium of courts and according to President Wilson, the courts are the balance-wheel of the Constitution. The Supreme Court in India under the Indian Constitution, as this House is aware, has wider powers than the highest courts in any other known Federation including that of the U.S.A. where the Supreme Court is not a general court of appeal. The Supreme Court is a court of appeal in all civil cases from every High Court including the High Courts in the States in part IB. It is the ultimate arbiter in all matters involving the interpretation of the Constitution. It has a very wide revisory jurisdiction over all tribunals even if they be not courts in the strict sense of the term. Unlike the United States Supreme Court, it has an advisory jurisdiction similar to that exercised by the Supreme Court of Canada under the Canadian Supreme Court Act. It has original jurisdiction to issue prerogative writs throughout the length and breadth of India. It is an interstatal court competent to decide questions *inter se* as between States. Even in regard to criminal matters, the Supreme Court is in a position to grant special leave and can also exercise criminal appellate jurisdiction in certain specific classes of cases. The criticism, if at all, can only be, not that the powers of the Supreme Court are, not wide enough, but that they are too wide.

The provisions relating to the High Courts are in the main modelled on the existing provisions except for the fact that certain inhibitions on the jurisdiction have been removed. They have henceforward jurisdiction to issue prerogative writs throughout the areas subject to their appellate jurisdiction. The anomaly of the High Courts not having any jurisdiction in matters relating to revenue has also been removed, and the powers of superintendence over subordinate courts and tribunals have been restored. Care has been taken to see that in the matter of selection to the highest court, the President has the benefit of the advice of those most competent to advise him on the subject. With a view to keep the High Court outside the range of provincial politics, the High Courts have in important respects been brought under the jurisdiction of the National Government. While there can be no two opinions on the need for the maintenance of judicial independence, both for safeguarding of individual liberty and the proper working of the Constitution, it is also necessary to keep in view one important principle. The doctrine of independence is not to be raised to the level of a dogma so as to enable the judiciary to function as a kind of super legislature or super-executive. The judiciary is there to interpret the Constitution or adjudicate upon the rights between the parties concerned. As has been pointed out recently in a leading decision of the Supreme Court, the Judiciary as much as the Congress and the Executive, are depending for its efficient and proper functioning, upon the co-operation of the other two.

The criticism in regard to Fundamental Rights has been that the exceptions strike at the very foundation of the rights. This criticism is entirely without foundation. The exceptions and qualifications introduced into the articles reproduce in statutory form the well-recognised exceptions and limitations on the Fundamental Rights dealt with in the article. Similar restrictions have been read by the Supreme Court into the United States Constitution which in general terms provides for these rights. Our 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. It is common knowledge that freedom of speech and of the Press has been interpreted by the Supreme Court of the United States as not to prevent legislation prohibiting intimidation by speech or writing or preventing the publication of indecent matter, or prevent the enactment of laws in the exercise of the police power of the State if the State can find a sufficient social interest for so doing. Similarly, religious liberty has

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been held not to protect the citizen against unsocial acts. The privilege of Assembly and public meeting does not stand in the way of the United States or the individual States exercising social control of assemblage of people in the interests of the common good. In the final form in which the article has emerged, this Assembly kept in view the need for drawing a line between personal liberty and the need for social control. While not departing from the principle that a person is not to be deprived of his property without compensation, the Constitution has invested the Parliament with the power to formulate the principles in regard to compensation with due regard to the nature, history and incidents of the property concerned. Being fully alive to the need for urgent agrarian reform affecting large a large mass of tenantry, this Assembly, after due deliberation, has inserted certain special provisions to prevent the legality of the measures undertaken being questioned from court to court while at the same time providing the necessary safeguards for protecting the interests of the parties affected.

In the Chapter on Fundamental Rights, there is one other matter which requires more than a passing notice. Clause (4) of article 22 has been animadverted upon as if it were a Charter to the Executive to detain a Person for three months. There is no such thing. The whole of article 22 is designed to secure against any abuse of the provisions of article 21 which says in general terms that "No person shall be deprived of his life or personal liberty except according to procedure established by law." If article 21 stood by itself, it may authorise an indefinite detention if only it conforms to the procedure established by law. Article 22 has been put in to prevent any such indefinite detention. The Constituent Assembly which was quite alive to the dangers confronting the new State could not rule out detention altogether.

The Directive principles of State policy, I should think, are also an important feature of the Constitution. Having regard to the wide nature of the subjects dealt with in these articles and the obvious difficulty in making the subjects dealt with by these articles justiciable, they have been classed as directive principles of State policy. The principles of Social policy have their basis in the preamble to the Constitution and the Objectives Resolution. Article 37 in express terms lays down that the principles laid down therein are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. No ministry responsible to the people can afford lightheartedly to ignore the provisions in Part IV of the Constitution.

In regard to the distribution and allocation of legislative power, this Assembly has taken into account the political and economic conditions obtaining in the country at present and has not proceeded on any *a priori* theories as to the principles of distribution in the constitution of a Federal Government. In regard to distribution, the Centre is invested with residuary power, specific subject of national and all-India importance being expressly mentioned. A large list of subjects has been included in the Concurrent List to enable the Centre to intervene wherever there is necessity to intervene and override State legislating, though normally when the coast is clear, it would be open to the State legislatures to legislate. The existence of a large list of Concurrent subjects is calculated to promote harmony between the Centre and the units, and avoid the necessity of the courts having to resolve the conflict if there is to be only a two fold division of subjects. In order to meet unforeseen national emergencies and economic situations, special provisions have been inserted providing for Central intervention. In this connection, it has to be remembered that the whole concept of federalism in the modern world is undergoing a transformation. As a result of the impact of social and economic forces, rapid means of communication and the necessarily close relation between the different units

in matters of trade and industry, federal ideas themselves are undergoing a transformation in the modern world. The Rowell Scrore Commission in Canada and the Royal Commission appointed to report on the working of the Australian Constitution suggested various remedies to get over the difficulties in the working of a federal Government. The problem is one to be faced by each country according to, the peculiar conditions obtaining there, according to the particular exigencies of the particular country, not according to *a priori* or theoretical considerations.

In dealing with a matter like this, we cannot proceed on the footing that federalism must necessarily be of a defined or a standard type. Even ill regard to the Constitution of Canada, two such authorities as Lord Haldane and Lord Watson were sharply divided the former holding that the Constitution is not federal and the latter expressly laying down the Opposite view. The crucial question to consider, short of all theories, is, "Are the National and the State Governments related to an another as Principal and Delegate?" So long as they can exercise full authority within the orbit of their established jurisdiction, there is no reason to deny the federal character to the Constitution.

I do not subscribe to the view that the Centre has been made to strong at the expense of the Union. In the legislative sphere there has been not much change in the list of subjects allotted to the units. The units have unrestricted executive power in the provincial field. Even in regard to the Concurrent subjects, the executive power continues to be vested in the units though there is a power of central intervention when the exigencies of the State, demand it. The emergency powers vested in the Union cannot by their very nature be of normal or ordinary occurrence.

In regard to the taxing power while the final allocation is open to further examination as the result of the report of the Statutory Commission to be appointed under the terms of the Constitution, the articles in the Constitution relating to the taxing power take into account the general economic condition and financial position of the different units and the tendency prevailing in most modern Federations of the Central Government acting as the sole taxing agency in the interest of the country while provision is made for the division or the distribution of the proceeds to the different units, as also for the grant of subsidies.

The Constituent Assembly has spent considerable time and attention over the subject of inter-State trade relations. The Assembly while adhering to the principle that freedom of trade between the different units is indispensable to the proper functioning of the Union, has made the inter-State relations much more elastic and flexible in our Constitution than in some of the known Federal Constitutions, to suit the exigencies and economic conditions of a vast continent like India.

The Constituent Assembly being thoroughly alive to the importance of a State language for the whole of India with a view to consolidate and unify the nation and recognizing the importance of regional languages in so vast a country, has evolved a plan for Hindi becoming the State language of India as early as possible. At the same time the Constitution has not lost sight of the need of English for legal purpose for some time and for scientific and inter-national purposes in the world as constituted to day.

The criticism that the Constitution as it has emerged is far too detailed and elaborate does not merit serious consideration. If as in other Constitutions the constitution and powers of the High Court and of the Supreme Court have been left for normal ordinary parliamentary legislation if the provisions, for electoral machinery are dropped out, if the guarantees provided in the matter of salaries to judges and civil services were omitted, if the existing administrative machinery which has been working is ignored, if no special provision is to be made for

[Shri Alladi Krishnaswami Ayyar]

Scheduled Areas and Scheduled Tribes, there would be absolutely no difficulty in cutting down the provisions of the Constitution and reducing the number of articles. But for the smooth and efficient working of a democratic machinery, it was felt that unless these provisions were contained in the Constitution itself, an infant democracy might find itself in difficulties and the smooth and efficient working of the Constitution might be jeopardised. There has been insistence on the part of various interests that sufficient safeguards must be inserted in the Constitution itself and even some of the members of this Assembly who, as a matter of abstract principle, are willing to subscribe to the principle of a few main provisions alone being inserted in the Constitution, not a little contributed to the detailed provisions.

In the course of the discussion during the Third Reading, there has been some reference to the subject of India's position as a member of the Commonwealth. On this subject I have already stated my views when the matter came up for discussion before this Assembly. It is unnecessary to remind the House that there is no article in the Constitution referring to this matter. The membership of the Commonwealth depends on the willing co-operation and consent of the two countries, independent in every respect of each other.

Mr. President, I have omitted one point while I was on the subject of Fundamental Rights and I should like to refer to it. While religious freedom is guaranteed to every individual and every religious persuasion, the State does not identify or ally itself with any particular religion or religious belief. There is no such thing as State Religion in India.

Altogether it may be claimed that the Constitution gives sufficient scope for the achievement by the Indian Republic of all those great objects which are, contained in the Preamble to the Constitution. The Constitution contains within itself the necessary elements of growth, flexibility and expansion. While it is not committed to any particular economic reorganisation of society, the people are free to adjust and would the economic conditions for their betterment in any manner they choose. To a large extent any Constitution depends -upon the people who work it. It is the human element that after all is the most important in the working of any Institution. It is common knowledge that when the final Constitution of America was adopted there was very little enthusiasm for it and several communications had to be addressed in the 'Federalist' to commend the Constitution to the American people. And yet at the present day the Constitution is looked upon with the same spirit and reverence as the Ark of the Covenant in the Bible. Similar is the experience in Canada and in Australia. The experience of other countries has shown that Constitution which have been hailed with universal acclamation have proved utter failures. Our Constitution is much more flexible than many written and Federal Constitutions. An easy and flexible method of amendment has been provided for. But that does not mean that amendment must be undertaken light heartedly. The people will then have no other work to do but mending and amending, the Constitution.

Before I conclude, I would be failing in my duty if I do not express my high appreciation of the skill and ability with which my friend the Honourable Dr. Ambedkar has piloted this Constitution and his untiring work as the Chairman of the Drafting Committee. Latterly I know he was ably assisted by my friend Mr. T. T. Krishnamachari. I would also be failing in my duty if I do not give my tributes to the services of Sir B. N. Rau and to the untiring energy, patience, ability and industry of the Joint Secretary, Mr. Mukherjee and his lieutenants.

In the end, you will pardon me, Sir, if I make some reference to your work in this Assembly as it may savour of flattery. You have given your whole life to the service of this country and this is the crowning act. There is none who is held in greater esteem and in love than yourself and you have showed yourself

to be the worthy President of this Assembly. I am particularly grateful to you because on account of my state of health you have been pleased to permit me to address from my seat and I am also thankful to the Members of this House for the indulgence they have extended to me in that respect. It is some consolation to me that I might have been of some little use in the work of the various committees and in the work of this Assembly. (*Cheers*).

Mr. Hyder Husein (United Provinces: Muslim): Mr. President Sir. I rise to lend my shoulder to the great wheel of progress which is depicted on the National Flag empanelled all round this Hall and which is reflected in this monumental work which is to adorn the Statute Book of free India in a few days' time. It is a landmark in the Indian renaissance, and a symbol of progress in political thought. The French slogan of liberty, equality and fraternity, brought about a revolution in human minds and carried the torch of freedom far and wide. That great nation laid the foundation of modern democracy in their own country and supported it in other freedom-loving countries. Their magnificent gift of the statue of liberty, presented to the American nation bears testimony to their love of freedom. The Americans, with their characteristic thoroughness, have treasured it and installed it on one of the islands on the south of New York, and it has become the object of great attraction to the visitor. The world cannot remain static, and with the development of the human mind, there is the evolution of political ideals as well. We have gone beyond the French conception of democracy and added justice to their trio, and given it the first place in the Preamble to our Constitution. The preamble is the key to the meaning and the scope of a statute and we find the spirit of the preamble pervading all the provisions that follow it. We also find traces of advance in political theories and we can justly claim our Constitution to be an improvement on the existing constitutions of the world, consistently with our indigenous requirements. The mass of literature collected and circulated amongst the Members bears testimony to the wide field of investigation into the constitutions of the countries spread all over the globe. The proceedings of this House constitute an eloquent record of the full use of those materials by the Drafting Committee and the honourable Members of the House. My esteemed and learned Friend Shri Alladi Krishnaswami Ayyar has just before me given further proof of it in his masterly resume of the entire Constitution, and it will be presumptuous on my part to repeat the process again before this House.

It is true that a good deal of criticism has been levelled against the Constitution and I consider it only right that it should have been so. These criticisms and long discussions have resulted in a great improvement on the original draft. Such differences as still exist in the minds of some of us have to be consigned to the cold storage, at least for the time being. We must realise that the time for criticism is over, and the time for implementation has arrived. It is our duty to make a united effort to give effect to it, both in letter and in spirit. It is then and then only, that our country can march forward with long strides.

Our Constitution is fairly flexible and I am certain that it could be worked with any known ideology before the Government. Constitution are not made for any particular party or any fixed programme. A written Constitution is a reflection of the aspirations of a nation, and a message to the world as to what we are about. Our Constitution has given us the base, and we have to build an edifice which would be worthy of Our ancient heritage. Let us all join in this great task. The country demands the services (if every man, woman and child who calls himself an Indian. It is then and then only that the dream of some of us can be realised, the dream of the great Architect of New India who is, alas, no more with us, but whose portrait sheds light on our proceedings.

We have reached the stage after tremendous sacrifices. We should not while away our time in scholastic discussions and parliamentary debates. Our struggle has been long and tedious. The honourable Member from Bengal, Mr. Maitra

[Mr. Hyder Hussain]

mentioned that period to be two generations. He is right in a way. But I would like to take it further backward to the middle of the last century. At that time it took the form of a revolt after century of exploitation by the foreign bureaucrats. It was a part of the great nationalist movement of the nineteenth century. It failed and was followed by such repression that it took a generation for the Indian genius to re-assert itself. This time it took a more systematic and organised shape under the name of the Indian National Congress. This was the beginning of the era to which Mr. Maitra referred. The struggle, was fraught with difficulties and the path was full of pitfalls and the task hazardous. But our great leaders followed it resolutely and courageously. The pace was considerably accelerated by the new turn that the Father of our Nation gave to the Indian politics. Blessed be his name. Within the short space of a generation we reached the stage of acquiring freedom even before it was granted by the foreigner. This Constituent Assembly was formed in 1946 to frame a constitution for the undivided India. Enormous changes took place during This period. With a view to the early recognition of our freedom, our leaders went the length of agreeing even to a partition of the country. But no one at that time realised that this would be a signal for man to turn a wolf to brother man, as the great English philosopher Hobbes said two hundred years ago—*Homo Hominis Lupus*. This is not the place to describe those horrible atrocities; but the misfortune is that some of its baneful effects still persist and affect even our daily life. The country has succeeded in solving much more complicated problems and I am sure it will rise to the occasion and get over this hurdle which stand in the way of national advancement.

This is not the stage, nor the time for criticising the various provisions of this Constitution. There has been a good deal of it, both inside and outside this hall. My answer is that this is the best that the available talent in the country could produce, and if we expect anything more, we have to produce men of greater intellect and scholarship in the land, if that is possible in the near future. I am however, bound to say that the product is one of which any nation can be proud. Let us then, pledge ourselves to give it our unstinted support without any mental reservations whatsoever. We have attained political freedom, and the need of the day is the economic uplift of the country, as for this alone freedom was worth fighting for. This requires greater labour, greater work and greater sacrifice than even the fight for freedom. It is not so difficult to destroy a thing as it to construct it. With the termination of foreign domination in the land, we have fun opportunity for constructive work. Let us then strive to build our India which will be worthy of its past and a pride for the future.

In these days of internationalism we cannot isolate our country from the rest of the world. We have to march forward in keeping with every other nation on the globe and then only our country can occupy its rightful and honoured place in the comity of nations.

Unfortunately my own contribution to the framing of the Constitution has been practically nil. I came in at a stage when nothing substantial could be done. It is my luck to be associated with the Indian constitutional advancement only at the stage of the Third Reading. I happened to be in England on my way back from the United States of America when the Indian Independence Act was before the House of Commons and there also I could attend only the last stages of the Bill. The Bill was passed in my presence and I got the thrill a few hours before my countrymen got it here. I have been treasuring it as a memorable day of my life. Likewise it so happens that I am associated with the framing of the Constitution also in its final stages. I am here on the bidding of one who is held in universal love and affection in my province, and one who forms the most stable Government in the largest province of the country.

I am grateful to him for making the suggestion and I consider it a great privilege and honour. Indeed, to be a Member of this late august Body even at this late stage.

The time limit and the occasion do not permit me to say more. So I have the honour to support the resolution placed by our Law Minister.

Shri B. M. Gupte (Bombay: General) : Mr. President, Sir, this Constitution, made up as it is of a series of compromise decisions, contains certain features of which we may well be proud and others also which many of us would have liked very much to avoid. Because of this attempt at unanimity, the Constitution has perhaps lost something in consistency and coherence, but it has gained in strength and stability. I am sure this Constitution would have been more progressive but for the extraordinary times in which it was framed. The world is out of joint and India cannot escape sharing that fate. The unrest, the unsettlement, the turmoil around us, both in this country and abroad—have materially influenced the framing of the Constitution. Nevertheless, it is a fully democratic Constitution and establishes social equality.

Many critics basing their objection on the emergency provisions, have denounced this Constitution as dictatorial and Fascist. But these detractors forget that even tender and emergency, the House of the People, elected on the widest possible franchise, remains in control of the situation. I do not see how this can be compatible with dictatorship or with Fascism. I know that Provincial Assemblies can be suspended but the franchise of the Provincial Assemblies is just the same as that of the House of the People, and therefore the Provincial Assemblies cannot claim a more representative character. Of course, our Parliament is not as sovereign as the House of Commons in England. It cannot be because in a Federal State it is the Constitution that is Sovereign and not any one organ of the State.

The Fundamental Rights and the small field of provincial subjects impose certain limitations on the sovereignty of the House of the People, but those limitations are not of the dictatorial or Fascist character. Naturally, therefore, the proposition that even in an emergency the Constitution remains fully democratic is, I think, amply justified.

Then the social equality. No discrimination between man and man on any ground is either permitted, or tolerated and untouchability is declared an offence. It is a matter for great sorrow that the Father of the Nation is not alive to witness the inauguration of the new Constitution, but it is some consolation that he lived to see the triumphant constitutional fulfilment of a mission that was dearest to his heart, namely, the removal of untouchability. Another highlight of the Constitution is the abolition of communal representation, a canker that was eating into the very vitals of our body politic.

We have taken nearly three years to complete our task some people wrongly believe that this was an unduly long period. But I invite their attention to the consideration that a hastily improvised constitution in a rapidly changing situation would have ultimately caused greater trouble and cost. Suppose we had finished the work within one or two years: then communal representation would have remained and at least the first elections would have been held on that principle. I therefore think that the delay, if at all it is a delay, is well justified because we have thereby avoided this undesirable thing.

Then coming to the economic side, I must confess that it is not as progressive as it is on the political or on the social side. The Constitution is certainly not socialistic but there are unmistakeable leanings towards socialism; and what is more important there is no bar no impediment to the establishment of socialism if the electorate really wants it.

[Shri B. M. Gupte]

Some of our critics have said that this Assembly is not representative, because it is not directly elected on the adult franchise, and therefore, the Constitution is not as socialist as it otherwise would have been. I contest this proposition. Theoretically it may be correct but I am sure that if at the time when this Assembly was constituted the elections were held on the adult franchise, the Congress would have swept the polls and therefore there would have been hardly any difference in the character of this Assembly. I, therefore, submit that this Assembly is adequately representative and this Constitution substantially reflects the public opinion of the time when it was framed.

Coming to certain defects—of course I can mention only certain defects I can point out that I do not like the provisions about the relations between the Units and the Centre. Speaking on an earlier occasion, I had described that our State was not a Federal State but a decentralized Unitary State. Subsequent provisions, namely article 365 and article 371 have vindicated my description. As far as States in Part B, C and D are concerned, avowedly and admittedly the powers of superintendence and control are vested in the Centre and therefore to that extent the State becomes unitary. The only question of doubt or dispute is with regard to States in Part A. At the time that I spoke on this point, I mentioned a number of marks of subordination to the Centre. I need not repeat them. The domination of the Centre is there. But my grievance is that it is secured by indirect means. I would not have minded it if it was done avowedly, openly and in a straightforward manner. The units are kept completely dependent in financial matters on the good graces of the Centre and it is this kind of semblance of independence with complete dependence upon the Centre for finances that is in my opinion the most objectionable feature.

Then I had also voiced my grievance that the same 'State,' was quite anomalous. The inequality in the powers and functions of the units is one of the unique features of this Constitution. This anomaly about the name is another such feature. The first one was of course due to historical causes and we could not have avoided it; there were already different kinds of units like Provinces, States, Chief Commissioners' provinces and so on. But this uniform name of 'State,' we could have avoided. As I had shown on that occasion it is anomalous, because there is no residuary power in any of the units. The, States in Part B, C and D are, definitely subordinate to the Centre and yet we have given to all the units the glorified name of 'State'. This may result in giving them a very inflated idea of their prestige. Because of this glorified name, they may think they have some independence, but their hopes are bound to be dashed to the around. This name has laid us open to the charge that our label is not according to the contents or that the contents are not according to the label. In my opinion, this anomalous name should have been dropped.

This brings me to the defects of drafting. I certainly think that drafting could have been improved, although as far as verbal improvements are concerned I do not wish to blame the Drafting Committee. We were always running a race against time, setting before us one deadline date after another. The hustled Drafting Committee had no time to look to this aspect. I also do not share the opinion expressed on so many occasions by so many critics that this Constitution is a paradise for lawyers. This is not a novel feature of our Constitution. It is a feature of all modern constitutions and for that matter of every piece of legislation. The world has become so complex that a perfect draft is impossible, and the ingenuity of the lawyer will always outpace the assiduity of the draftsman. Moreover in this Constitution owing to detailed provisions comparatively much less is left for interpretation or convention and nobody can therefore say that the lawyer members of the Drafting Committee, because of partiality to their profession, had created a paradise for lawyers in this Constitution.

My objection to the drafting is, however, more fundamental. In my opinion, there is a very important defect about the convention of responsible government. We have in this matter copied the Irish Constitution though similar provision is not found in the Canadian or Australian Constitutions. In the Constitution of Ireland there is provision that the Ministry shall be responsible to the legislature; we have taken this but at the same time, we have not copied what is provided in it, namely, that the President is bound to accept the advice of the Ministry. We have left that out. I really do not know why. It has given rise to great misunderstanding and many people think that the President is likely to be a dictator. According to convention, he would certainly be a constitutional head only. This was provided for in the Instrument of Instructions. But later on we dropped that instrument also and it has clouded the position in respect to this matter.

Then again, with regard to the President we do not mention any discretionary powers, but with regard to the Governor the discretionary power is mentioned. I do not see why there should be this difference. Of course, there are conventions and the strength of democracy lies in the character of the people and their representatives. If our representatives are strong enough, they will see to it that in spite of the doubtful nature of the provision, the convention shall be observed. But what I say is that I do not like that this important matter should have been lacking in clarity.

After all, a Constitution cannot be judged merely from its text or on paper. The Canadian and Australian Constitutions contain a number of provisions giving powers to the Governor General, but in practice those powers have never been exercised. The Weimar Constitution was said to be a model democratic Constitution, of the time but it was soon wrecked by Hitler and out of its ashes arose a terrible dictatorship which plunged the world into a devastating war. So it is not the Constitution that matters nor the people who make it, but it is the men who work the Constitution and the spirit in which they work it. Any Constitution may be good on paper but its success depends upon the manner in which it is worked.

In this connection many people have apprehensions about adult franchise. Their apprehensions are partly justified, but we must have faith in our principles and faith in the common man. Like other infants, our infant democracy will of course have teething troubles and its adolescence may be marked by mischievous pranks; but in spite of the initial trouble and occasional lapses, I hope generally and ultimately the commonsense of the common man will triumph. It was for us only to fashion the instrument. It is for others to work it. As far as I can see, we can certainly make the claim that we have fashioned it to the best of our abilities and according to the best of our lights. It is an instrument fairly workable and fairly flexible. It ensures security and stability. If we study the provisions of this Constitution, we find that the one dominating concern of the Drafting Committee was the security of the new State. Therefore, this Constitution ensures security and stability without impeding progress. It promotes collective good without stifling the development of individual personality. But in my opinion, the real test of the constitution would be whether it is able to bring about any speedy improvement in the miserable lot under which the common man has been suffering for generations past. If this Constitution brings him some solace I shall certainly feel very proud of my association in the framing of it.

Shri Balwant Sinha Mehta (United State of Rajasthan) : *[Mr. President, I consider it a great privilege that I have got this opportunity to speak in this Assembly. It is the first time I am going to speak here but it is at a time when the free Constitution of free India is going to have an existence of its own after

*[Translation of Hindustani speech.

[Shri Balwant Sinha Mehta]

having been adopted by this assembly. It is a matter of great pleasure for me to be able to say a few words of my own at such an auspicious moment as the present one.

Several friends have already given us their analysis of this constitution. While some have praised it others have adversely criticised it. But so far as I understand it appears to me that their sense of modesty has made the critics adopt this course. Our people are modest by nature. Besides it has been almost a habit with us that we usually underrate ourselves while foreigners by praising us enable us to realise our achievements at their proper worth. I could give several instances to prove my point but I do not think it is really necessary to do so.

The fact is that the Constitution drawn up by us is not only quite detailed but also quite good. I am quite sure, that the foreigners would be wonder struck when they would see how good a Constitution we have been able to give to ourselves. All the Members of this august Body and the members of the Drafting Committee and more particularly Dr. Ambedkar, T. T. Krishnamachari, Shri Alladi Krishnaswami and others have laboured hard for giving a proper shape to this Constitution. I believe these gentlemen deserve all the praise we can bestow upon them. We must also offer our homage to Pandit Jawaharlal Nehru, Sardar Patel and the other Congress Leaders and martyrs. It is due to them that we are today in a position to frame a Constitution for free India. They have also guided us directly or indirectly in framing our Constitution. We owe deep gratitude to you, Sir, for having guided the proceedings of the House with great impartiality and having enabled all shades of opinion to find full expression in this House. The representatives of the nation in this august Body who have devoted their energy and time for giving the fullest consideration, to the Draft Constitution. Those who have criticised this Constitution have used rather hard and bitter words. It is the opinion of some of them that while too many powers have been vested in the President and the Centre, quite a good number of limitations have imposed on the freedom and fundamental rights of the citizens. That is no doubt true and I do not think anyone can deny the truth contained in that statement. But, it is my submission that we were obliged to do so by the existing circumstances, by the conditions prevailing in the country today. Besides it appears to me that in view of the circumstances in which we drafted this Constitution it was but proper that such restrictions should have been imposed. As a free people we are still in an infancy. The national sentiment was also not taken as yet in this country. Both these considerations compel us to accept these restrictions and limitations. You are well aware, Sir, that only some time back there existed too many petty states, too many Rajas and Maharajas and many a regional loyalties in our country. All these events had made their abode in our country and it was necessary to strengthen the Central Government in order to eradicate them. It is my firm opinion, Sir, that this Constitution is fully democratic in Character. It provides for liberty and at the same time it secures equality as well.

Moreover, Sir, the provision for adult franchise which we have included in this Constitution is so important and significant that even if there had not been any other provision in it, it would have yet retained fully a democratic character. The fact is, Sir, that even at considerable risk to ourselves we have included this provision for adult suffrage, and thereby maintained the democratic character of our State.

There are some others who allege that we have not maintained any link with our ancient and historic institutions. But I would urge such critics to remember that today we have only a very dim and incomplete picture of our ancient polity. The fact is that we cannot discern it even in its outlines. But even then we have

included quite a number of the element of our historic institutions whereby our culture world be adequately protected.

But I concede that there is one thing which appears to be a serious defect in it. If this Constitution had embodied the ideal of Gandhiji in this respect as well, if it had embodied Gandhism, in the full sense of the term, it would have been an ideal one—one which would have been an example and a message to these peoples and nations of the world. The world today, Sir, is in a state of turmoil and discord. It is to our Bharat that the nations of the world are looking for securing salvation from this sad state. I, therefore, submit, Sir, that it would have been far better for all concerned if our Constitution had embodied Gandhism and more particularly his economic plan and social ideals. But while I regret this omission I realise that a Constitution also Changes as the nation goes on marching forward. We can today feel a legitimate pride in three features of this Constitution, that is to say the guarantee gives of Fundamental Rights the provision for Adult Suffrage and the elimination of communalism and sectionalism. We can raise our head high for the ideals of which this Constitution is a concrete manifestation. The Constitution of a country is never static and it shall always be open to amendments. The Father of our Nation had secured for us our political independence and I think that that also he did in a unique way. Yet despite the attainment of political independence we have yet to attain economic democracy. Whenever the representatives of the nation feel the necessity of the same. But as it is an instrument which we can use effectively for ensuring the continued progress of our country.

This Constitution, above, all, has come is a message of joy and cheer to the people of the Indian states. The great change that has come over the face of the country today is the total disappearance of the 562 petty states and feudal estates which had been so far tyrannising other large tracts of our country. These have now yielded place to administrations which would have the same political pattern as our Provinces have. It is our achievement which even the greatest constitutional experts cannot but praise. You are obliged for all this to Sardar Patel. In this connection I would draw attention to the fact that we have yet the system of Jagirdari. This system is responsible for the many calamities, pillage and murders which are causing considerable anxiety and terror to the people. I hope, however, that by the time this Constitution comes into force these disorders would have been not only brought under control but also completely eliminated.

Another great achievement in my opinion has been Sir, our decision with regard to our State Language. This is the only thing that can and will keep our country, united. It is a very great achievement, but we have now to convert our official language into our national language. The responsibility for this falls specially on the shoulders of those people whose language is Hindi and the other people can co-operate to make this language so simple and easy that it may become prevalent in the whole of the country as a national language.

It is a matter of regret that our language, Rajasthani has not found a place in the schedule of regional languages. This is a language spoken by 15 million of people and possesses a rich literature and finds a very high place in the ancient and chivalrous literature of Hindi. It is matter of great regret that such a language has not been included in that Schedule. I think our leaders would be able to secure a place for it in the schedule of regional languages through the Parliament at some future date.

One thing that has pained and offended our people in the States and particularly the Rajasthanis is the division of Sirohi by our States Ministry. Sirohi has an important place in Rajasthan. In Rajasthani language the word 'Sirohi' means a sword and it is Rajasthan's sword indeed. Our respected leader Sardar

[Shri Balwant Sinha Mehta]

Patel has realised Maharana Pratap's dream of United Rajasthan, but if that sword is broken, I think every Rajasthan would be pained. Sirohi has all along been connected with Rajasthan. It is connected with Rajasthan linguistically, geographically, as well as historically. At least a thousand years history would testify to the fact that Sirohi is an integral part of Rajasthan. Maharana Kumbha of Abu had constructed the fort of Achalgarh to defend Rajasthan from attacks of Gujarat, and the remains of that fort are still there. Even today the rich capitalists of Rajasthan have made investments running into hundreds of thousands in that state which is our part and parcel historically, traditionally, geographically and in every way. Its division is very painful for the people in Rajasthan. I think all the people of our Indian States would be pained at this. 'This is a division which was neither demanded by the people nor the Raja of that State. Neither the local Congress Committee had made a demand for it, nor the public there had made any such demand. Ever since its incorporation in Bombay, the residents there have been demanding its merger with Rajasthan and identifying themselves with the people of Rajasthan. But the sudden and secret way in which this division has been effected has surprised everybody. When the announcement was made here in the Assembly, I learn, Pandit Nehru our leader was fortunately present here and he as also other members were listening with surprise to that statement about the decision to divide Sirohi from immediate effect. We do not know why the partition has been effected, but so far as we can guess, it has been made in view of the tower of Abu. Abu has been an important part of Sirohi as well as Rajasthan. It has always been a part of Rajasthan and was like a capital under British rule. Its connection with Rajasthan dates back to thousand years. The people there speak Hindi and Rajasthani. There are only a few people speaking Gujarati. They are hardly 3 or 4 per cent. There was no demand for partition from the public nor had the Raja expressed the least desire for it. So many covenants have been entered into so far, but this is the first case of partitioning a region without consulting either the Raja or the people. So I think this is a thing, which would cause a deep pain to the people of Rajasthan. I hope this error would soon be rectified.

Another great achievement of our Constitution is that the great blot of untouchability has been removed for good in our Constitution. This is specially a matter of great pride and pleasure. The credit for this goes to our leaders particularly Thakar Bapa. The whole of his life has been dedicated to the service of aboriginals and Harijans. We have been able to remove this blot as a result of Thakar Bapa's service and Mahatma Gandhi's efforts and renunciation. You must be aware that there are crores of aboriginals in India who live in wild forests. It is our respected Thakar Bapa who has made them politically conscious. He goes to them and inspires them even at this age. I pay my homage to him on this occasion for causing this national awakening. There are aboriginals and Harijans in Rajasthan in great number, and I request that we should have a minister for the welfare in Rajasthan just as Madhya Bharat has a minister for them. Our Premier of Rajasthan is present here, and I appeal to him to make such a provision. These people number 30 lakhs and their condition is very pitiable and nothing has been done for them so far. If these people have to be elevated to our level, we, and all of you should fully co-operate in the matter.

We have made this Constitution as good as we could. It is now our duty to go to our constituencies and explain this Constitution to the people of our country-side, which is our real sphere of work. Sometimes misgivings get currency in the masses due to lack of education and propaganda. For the general masses, independence and Constitution can have the least significance only if they can provide him with food, raiment, shelter and education. But though

there is nothing like this clearly embodied in the Constitution, yet we can by our action work the Constitution in such a way as to provide these things for them, and all their difficulties be soon removed. But this will happen, only when we follow the ideals of Mahatma Gandhi which have been embodied in this. For this we will have to reduce our expenditure too. We will have to level down the standard of living of the people at the top, and to raise that of the people at the bottom. Our administration is becoming more and more costly. I think it is the effect of the British rule. Our constitutional machinery would also be quite expensive just because the present set up is so costly. If any attention had been paid to this reform, it would have been better. Now too this is for the administration to give it such a shape as to benefit the poor most.

With these words, I support Dr. Ambedkar's motion to pass this Constitution and pay my homage to Mahatma Gandhi, owing to whose sacrifice and efforts we have seen this day, when we have completed our Constitution after attaining our independence.]*

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 Nandkishore Das (Orissa: General) : Mr. President, Sir, having had absolutely no opportunity of participating in the discussion of this Constitution in its clause to clause consideration stage, I avail myself of this last opportunity to make a few general observations on the Constitution as it has emerged in final shape out of our deliberations over the last nearly three years.

I recall to my mind the state of things that prevailed in the country in December 1946 when we met for the first time in the Constituent Assembly. The political firmament in India was at that time full of dark clouds and ominous forebodings and there was considerable doubt and anxiety in our minds as to whether the heterogenous elements and divergent groups that constituted the then Constituent Assembly would be able to evolve an agreed and satisfactory Constitution acceptable to the country as a whole.

The events that followed in quick succession the initial stages of the Constituent Assembly sittings culminating in the transfer of power and the partition of the country removed the uncertainties to a great extent. The disappearance of the recalcitrant elements from the House paved the way for the Constituent Assembly to set about its business under happier auspices and in a more congenial atmosphere. But even then the framing of a Constitution for a country having so many diverse elements and a multiplicity of interests was a task of such stupendous magnitude that there were doubts naturally felt by even the most optimistically minded among us as to the ultimate success of our endeavours.

It is therefore a matter of supreme satisfaction that thanks to the accommodating spirit displayed by our leaders and constitution-makers, the labours of this Constituent Assembly have at last been crowned with success and we have now before us a Constitution which can rank as one, among the best Constitutions of the world both in respect of its size and the inherent worth of its contents. While presenting the Draft Constitution to the House more than a year ago, Dr. Ambedkar had stated that this Constitution with 313 articles was the bulkiest constitution in the world and with the number of articles now increased to 395 the Constitution has become bulkier still. Our hearty congratulations go to our leaders and constitution-makers who in the, midst of their other preoccupations have collaborated in this obviously up-hill task. What can be said as the flesh and blood of this constitutional organism has of course been contributed by our present day leaders and by a long line of distinguished revolutionaries that preceded them but its bones and muscles in other words the actual framework of the Constitution is the fruit of the labours of the Drafting Committee headed by Dr. Ambedkar, who alone of all persons has carried on his shoulders this tremendous burden with conspicuous ability.

There are good many admirable features of this Constitution to which attention has already been drawn by so many honourable Members and I do not think it necessary to refer to all of them. The enfranchisement of the entire adult population of the country is the biggest democratic step adopted in the Constitution. It may interest honourable Members of the House to be told that the number of people which this Constitution has enfranchised is almost equal to, if not more than, the entire population of Soviet Russia. This adult franchise undoubtedly represents the fulfilment of our long cherished and often

declared intentions but its success in the context of present day unsettled state of things in the countryside is a matter which causes some doubt and anxiety. Fundamental rights constitute another glorious chapter in the Constitution. That these rights have been hedged in by many healthy restrictions does not at all undermine their efficacy; on the other hand they make the, rights all the more precious. Care has been taken to see that the rights guaranteed to the citizens do not degenerate into license to do anything one likes in the name of liberty of action miscalled 'civil liberty'. Some friends have complained of the inadequacy of our fundamental rights. My honourable Friend Shri Lakshminarayan Sahu has even gone to the length of saying that civil right enjoyed by people in the British regime have been curtailed by the present Constitution. I present to my friend Shri Sahuji and to others of his way of thinking a P.T.I. news item published in today's *Hindustan Times* under the caption "Students be laboured Railway official."

"Armed with daggers, iron rods and hockey sticks 40 students of a local English High School dragged out a travelling ticket examiner from a guard van at Ghusia Kalau railway station near here and belaboured him. The ticket examiner had charged some students for travelling without ticket in class I.

He was admitted to the Sada hospital to be treated for his serious injuries."

If the conception of civil liberty of my, honourable Friend Mr. Sahu includes unsocial and anti-national activities like these, I am really sorry for it.

Rights must be co-related to some duties. It would have been better if along with enumeration of fundamental rights, the Constitution had contained specific references to duties to be performed by the citizens in order to be eligible for their rights.

The abolition of untouchability, enforcement of disability in any shape or form arising out of untouchability to be treated as a punishable offence in law, the substitution of joint electorate in place of communal electorate are among the other happy features of the Constitution. Articles 36 to 51, contained in part IV of the Constitution, otherwise known as Directive Principles of State Policy represent the quintessence of all that is the best and the noblest in any code of social, political, cultural or economic ethics that prevail in any part of the world. I wonder how in the face of all these distinctive provisions, the Constitution has been cried down in certain quarters as reactionary and retrograde. May I humbly ask these unkind and ungenerous critics to put their heads together, and produce an alternative Constitution which must be a workable Constitution suited to the requirements of the country and not one meant for an Utopian society ?

It has got to be admitted however that the Constitution in spite of being one of the best paper Constitutions in the world has failed to evoke sufficient enthusiasm in that country and a suspicion lurks in the minds of even the most ardent admirers of the Constitution that something is wrong somewhere and things are not proceeding in the way they should. Some friends have complained that the Constitution is not Gandhian in conception and they have felt bitterly disappointed on that score. Speaking about myself personally, I do not at all feel disappointed that this Constitution is not moulded on Gandhian ideal, inasmuch as I least expected a Gandhian Constitution from our constitution-makers. We all swear by the name of the Father of the Nation, but how many of us have been able to assimilate his teachings in our personal activities of the day to day life ? How many of us have that undying faith in the refashioning of our society on the old village self-sufficiency model ? A Gandhian Constitution is not to be produced by a mere mechanical process but must grow out of deepest convictions and a determination to shape our society strictly and meticulously in conformity with his ideals. This determination is to be found almost nowhere in the country. Hence evolving of a Gandhian Constitution out of non-Gandhian brains and

[Shri Nandkishore Das]

minds is quite out of the question. Gandhiji throughout his life laid repeated emphasis on decentralisation of powers but our Constitution has proceeded on the reverse line, namely, over-centralisation. Our leaders think and think rightly that without a strong Centre this infant democracy would be in danger of being destroyed by disintegrating forces from all sides. The events happening in the country ever since the coming of independence provide sufficient justification for the type of Constitution that we now have. Therefore, lack of enthusiasm for the Constitution if properly diagnosed will be found to be due not to any inherent defect of the Constitution but rather to the deplorable and gradually drifting situation which has overtaken this unhappy land during the two and odd years of post-Independence period. Under the circumstances no useful purpose will be served by decrying the Constitution for this or that real or fancied defect and the best and the most patriotic course for all sections of people is to unite in order to give the new republican Constitution a fair trial and thereby paying undivided allegiance to the leaders of the nation in their efforts to consolidate the newly earned freedom.

Sir, before I conclude, I think it my duty to give you my humble tribute of respect and admiration for the fair and impartial manner in which you have conducted the proceedings of this House and thereby contributing in no small measure to the success of this undertaking.

Sardar Sochet Singh (Patiala & East Punjab States Union) : Mr. President, Sir, I rise to complement this House on the fruition of its three years' labour and the emergence of the country's constitution in its present final shape. The country should be rightly grateful to its great leaders, eminent jurists, legal luminaries, linguists, grammarians, and men of letters who have all toiled incessantly and worked vigilantly in presenting to their mother land what they in their wisdom and honesty have thought and felt to be best in the interests of the millions of men, women and children who inhabit this great subcontinent and in whom sovereignty and ultimate mastery over the affairs of the country henceforward vests.

Sir, much has been said about the pattern to which the, constitutional structure should conform and the direction to which it leans or does not lean. We did not start with any prejudice in favour of or against any particular pattern. We were not wedded to a federal, unitary or any other type of structure. We had the advantage of having the text and experience of so many constitutions of other advanced countries before us. We have tried to pick and choose the best that was more suited to our own conditions and special requirements, our traditions and experience of governmental institutions during the last half a century. Coupled with the historical generalities of the situation we have had the additional benefit of practical experience of the governance of the country during the past twenty-seven months and the due and realistic appraisal of our domestic problems and social trends in the context of international and world problems and trends, and it is in this setting and background that the merits of our Constitution should be judged and appreciated.

Sir, I am one of those who feel and believe that the interests, consolidation and permanence of our newly won freedom demand a strong Centre consistent with due and free functioning of provincial and local autonomy. We cannot afford the luxury of over-decentralisation simply in order to satisfy mere slogans and catchwords. While a unitary form of Government is unsuitable and impracticable in a vast country with 340 millions of people, having varied local and regional needs and problems, a completely decentralised scheme of Government

is sure to let loose fissiparous tendencies resulting in the ultimate disruption of the country, particularly in view of the regrettable existence in our midst of the hydra-headed monster of provincialism, communalism, lingualism and social and economic imbalance.

Some friends have tried to make a fetish of civil liberty which they say should end only when civil authority comes to an end. Such an assertion is simply amusing, if not ridiculous. It is as if one should consent to the destruction of a deity, but object to the obstruction in prayers to the same deity. Healthy restraints and restrictions against abuse of liberty must be provided for if we have to prevent the break-up of our country and the break-down of its Governmental machinery.

Some friends have wailed that the right to work has not been provided for in our Constitution. Article 19 clause (g) reads as follows : "All citizens shall have the right to practise any profession or to carry on occupation, trade or business."

If it is not the right to work, I wonder what other language could convey the concept of work more appropriately or unambiguously.

My two Sikh friends from the East Punjab have had occasion to say so much with regard to their reactions to the provisions concerned with minorities. I may point out that the word 'minority' whether religious or racial does not figure anywhere in our Constitution. But the word 'community' which is the root of the ugly outlook called communalism has been allowed to be incorporated in relation to the Anglo-Indians. I admit that the Anglo-Indians are not a religious group, but they are a racial community so much advanced socially, educationally and economically that there is no justification for according them any special or preferential treatment. Surely, there must be something other than their backwardness which has entitled them to disfigure our Constitution by the provision of unmerited and unwarranted favouritism. The safeguards provided for the existing services could have been deemed ample to protect their interests; but any discrimination in their favour for future recruitment can be rightly resented and objected to by other communities. Beyond opposing the concession bestowed upon the Anglo-Indian community, the Sikhs are not justified in demanding any undue discrimination in their own favour. The question of Sikhs is not of sentiment, but of substance. The fundamental question is whether the Sikhs are a backward community either socially, educationally or economically or even in any other sphere. I maintain they are not. Socially, they are respected and economically they are prosperous because they are enterprising and hard working. It was revealed at the Sikh Education Conference at Patiala last month that according to the last Census, the standard of literacy among Muslims of the Punjab was 9 per cent, Hindus 16 per cent and Sikhs 17 $\frac{1}{2}$ per cent.

During the current year the East Punjab Public Service Commission compiled a list of successful candidates for Provincial services according to a tentatively agreed ratio of 40 per cent. for Sikh, and 60 per cent. for others. The Premier of East Punjab, Shri Bhim Sen Sachar, referred the list back to the Public Service Commission with the recommendation that the list should be drawn up strictly on the basis of merit and it resulted in the selection of Sikh candidates in excess of 40 per cent. May I enquire from Sardar Hukam Singh and Sardar Bhopinder Singh Man and others of their way of thinking and feeling whether our backwardness and necessity for safeguards lie in our higher literacy and greater efficiency? Besides, the success of Sikh candidates at the two competitive examinations for the I.A.S. during the past two years has not fallen below our proportion in the population of the country. It is to be remembered that

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both these competitive examinations were held at a difficult time when a large and opulent part of the Sikh community was suffering from the hardships and rigour of partition and its aftermath and necessary conditions and atmosphere for first class preparation for higher examinations were not available to displaced candidates. I have even hope and confidence that after the resettlement of displaced persons, our young men would show and achieve much better results in getting opportunities for the service of the country.

Sardar Hukam Singh has stated an economic truth in saying that the two main avocations of Sikhs are agriculture and army. He has nothing to complain about any discrimination as far as agriculture is concerned which absorbs 85 per cent of our population. The special position in the Army is sure to subsist as far as our moral and physical qualities and geographical situation continue as they are. No country can afford to keep bravery and stamina out of its army and the position of East Punjab as a border province is sure to oblige the Government of the country to take steps and measures to impart military training to the populace and equip them fully to meet the menace from the other side and provide a permanent reserve from which the regular army would have to draw its requirements from time to time. I think it is time we stop harping on our inferior position and nauseum and insult the intelligence and fitness of our new entrants to Government services and the efficiency of those who are already in. An over-emphasis on inferiority and helplessness, when they are not there, will impair the self-respect and dignity of our able officers if not their material prospects. As regards services, our case is not on all fours with that of the Scheduled Castes and Scheduled Tribes and it is no use our creating artificial smokescreens to hide or distort truth.

Another attempt is made to manufacture an artificial grievance when it is alleged that the decision of the Minorities Advisory Committee to bring the backward classes among the Sikhs into the category of Scheduled classes has been lightly changed to exclude PEPSU from the operation of this decision. I declare that nothing is farther from the truth. As far as any one can see the position has been considerably improved in the direction contrary to what has been attempted to be made out by Sardar Bhopinder Singh Man. The relevant portion in the report of the Honourable Sardar Vallabhbhai Patel, Chairman of the Advisory Committee on Minorities and Fundamental Rights dated 11th May 1949 reads as follows :

“The Committee also accepted the unanimous Proposal made by the Sikh representatives that the following classes in East Punjab, namely, Mazhabis, Ramdasis, Kabirpanthis and Sikligars, who suffer the same disabilities as other members of the Scheduled Castes, should be included in the list of Scheduled Castes so that they would get the benefit of representation given to the Scheduled Castes.”

At that time, the status of the Indian States was intended to be kept different from that of the Provinces. But, subsequently, the decision to bring both to the same level and status has culminated in the form which article 341 has now taken. Article 341 reads

“The President may, after consultation with the Governor or Rajpramukh of a State by public notification, specify the castes, races or tribes or parts of groups within castes, races or tribes, which shall for the purpose of this constitution be deemed to be Scheduled Castes in relation to that state.”

It appears from this that there is no distinction as between East Punjab and the PEPSU. Article 15 clause (1) provides—

“The State shall not discriminate against any citizen on grounds only of religion race place of birth or any of them.”

In the face of this how can our Constitution or the Government of the country or any State in the country based on this Constitution afford to make discrimination as between East Punjab and PEPSU ? I am afraid the fears expressed by my co-religionists are extralogical and without reference to the appropriate provisions of the Constitution.

The objection with regard to the jurisdiction and function of the Backward Classes Commission is equally groundless. The Commission to be appointed under article 340 shall investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and make recommendations to remove such difficulties etc. etc. The backward classes among Sikhs are not excluded from the purview of the Commission. The Sikh Community on the whole is not at all a backward community and its spokesmen in the House have no business or justification to insist on its being classed as a backward section of the population. This is neither a fact nor is it believed by the majority of Sikhs or their eminent leaders. The Maharaja of Patiala, the Rajpramukh of PEPSU, Sardar Baldev Singh, the Defence Minister of India, Jathedar Udham Singh Nagoke, the President of the highest religious institution, the Shiromani Gurdwara Prabhandhak Committee, Sardar Partap Singh Kairon, Member of the Congress Working Committee, Giani Gurmukh Singh Musafir, President of the E.P.P.C.C., all the past and present Sikh Ministers of East Punjab and all Legislators of the East Punjab do not share the views and sentiments of Sardar Hukam Singh and Sardar Bhopinder Singh Man that the entire Sikh community deserves to be included among and accorded the treatment of backward classes. For myself, I belong to a majority of India—a majority of kisans who make up 85 per cent. of its population.

Unfortunately the trouble with some of our leaders is that they have never throughout their public career had experience of working in any secular institution and they have always built their leadership and power on slogans of 'religion or community in danger' and they find it difficult to give up old habits and propaganda or to strike upon new outlook or programme. I can hope that had Master Tara Singh ever worked as a Municipal Commissioner in Amritsar and seen in actual practice that Hindu and Sikh Commissioners were equally anxious and keen for sanitation and the health of all citizens living in the municipal town, he could have overcome much of the imaginary fears and suspicions against the majority that are haunting him today. In one breath he declares that Hindus and Sikhs are comrades in life as well as death and in the next that they cannot live under one another's domination. This is strange logic but our friends in the House have to echo whatever views or sentiments their leader expresses outside.

I appeal to my co-religionists to cry halt to this campaign of mutual distrust and hostility. Love begets love and hatred breeds hatred. If we sow trust we reap confidence. Having allowed ourselves to indulge in militant communal ideas and slogans we cannot, in fairness, grumble about the aggressive communalism of the majority community in the East Punjab which is now pressing even the Punjabi language. What we need is a change of atmosphere where justice, liberty, equality and fraternity prevail to the good of all and the glory of the country. Our Constitution may be blamed for not showing undue favouritism to any section excepting one, but it does not lie in any one's mouth to say that any discrimination against any section or interest is intended or for.

Our Constitution carries in it the impress of the high-souled nobility of the President—Dr. Rajendra Prasad, the universal vision of Pandit Jawaharlal Nehru, the unfailing judgment and strength the Sardar Vallabhbhai Patel the scintillating

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and penetrating intellectuality of Dr. Pattabhi Sitaramayya, the erudition and labours of Dr. Ambedkar and above all the Patriarchal blessings and divine inspiration of the Father of the Nation—our revered Mahatma Gandhi. It is my hope and prayer that such a monumental Charter of Freedom of minions of my countrymen will not fail to bring about peace, prosperity and happiness not only for this, country, but for the whole world. (*Cheers.*)

Mr. T. J. M. Wilson (Madras : General) : Mr. President, Sir, I also join in thanking you, the Rashtrapathi and the Chairman and members of the Drafting Committee for this Constitution. This Constitution is criticised by many on the ground that it has borrowed from foreign Constitutions and from foreign ideas. It arises out of a misconception that our country is entirely independent of and different from other countries and therefore our nation had nothing to do with the ideas and achievements of other nations. But the truth is that the whole humanity is marching forward as a single whole—of course with different progress for different countries of the world on account of the different material conditions, but all the same is marching towards the same goal and in the same direction and the heritage that mankind has so far won, either of the fundamental principles of equality, and liberty, and fraternity or of the Constitution itself, is the common heritage and common property of all the nations and each nation would draw upon and ought to draw upon that common heritage and march forward further adding to that heritage by its own experiences and by its own struggles. If to day each nation talks of equality, it has come to us long long ago—when Christianity had offered this conception of equality to humanity at the time of the greatest crisis for human society—on the fall of the Greek City States, when the conception of equality was absolutely foreign and unknown to those Greek City States and when the society had no foundation—no basis to rest upon; and if today everybody talks of liberty, this liberty has been won for us by centuries of struggles and revolutions and experience, and therefore the criticism that we have borrowed from foreign Constitutions or from foreign nations, is absolutely wrong.

But how far has humanity progressed till to-day and how far does our Constitution reflect this progress of humanity? Whatever the difference in approach or of method the whole human thought at present whether it is literature or science or art or philosophy— is centered upon one fundamental factor and that is the common man and his amelioration. His position is so much established that even his enemies swear by him. Therefore it is today that Everybody talks of democracy though this unfortunate word has had to pass through so much strain and stress. But what is this democracy? The most elementary requisite of democracy is the right of every citizen to vote and we have provided for it in our Constitution. But even this was questioned by some of our friends on the ground that they are not sufficiently educated to carry on the Government of the country. Their contention is that only intellect is necessary for the Government of the country. But the conditions and also the philosophy have changed. Government also has changed—the Government is not something meta-physical or something mytic. Government has to deal, today with the actual conditions of people and the needs of people, whether they are of food and cloth or of health and education and how can anybody else claim to know these needs of people better than the people themselves ? Thought is, of course, necessary and intellect is really essential; but unless it is united with action, unless it is based upon the experience of the people, it will not achieve much. Therefore, the purpose of adult suffrage, the right of every person to vote is to bridge this gulf between action and thought. But is this right to vote once in five years enough ? The essence of democracy is not so much the existence of what are

called political parties, etc., but the essence of democracy is the effective participation of the individual in the actual government of the country. The greater and more effective the participation of the individual in the government, the greater is the democracy, because democracy is still only an ideal which has yet to be reached by humanity. Decentralisation would have done something in that direction, if we had provided for it in our Constitution. But even the federal character of the Constitution has been extremely narrowed down, and even that feeble and narrow federalism disappears some times and converts itself into the unitary system. Reference is made by some to the Village Panchayats, those ancient self-sufficient Indian communities where agriculture and hand weaving industry were combined and which have survived centuries of invasion and conquest, and which were uprooted and destroyed by British imperialism of whose glorious achievement the Governor-General in 1834 reported "The bones of hand-weavers are bleaching the plains of India". I am not one of those who look upon these Panchayats as perfect or eternal. But what I say is that this Assembly should have taken the one from that inherent, native aspect of the Indian society and should have provided for some such machinery, which would have enabled the individual to participate effectively in the government of the country and the authority to flow not from top but from bottom to top. I plead for this participation of the individual, not only because it is essential in the interest of democracy, but also because it alone makes for tile strength and efficiency of the Centre, though many people mistakenly think that strength lies in centralisation and a strong Centre. I repeat that democracy of conscious effective citizens is much stronger and more efficient, from any point of view than any other form of government, and the usual talk of weakness of democracy is absolute nonsense.

There has been provision made in the Constitution for the freedom of several languages and cultures, providing at the same time, for a national language. That should have logically resulted in more autonomy and more freedom of the States, making for one powerful nation. The several languages and cultures would have been guaranteed and made more effective if it had been buttressed by a provision for such independent States and their distribution on a cultural and linguistic basis. I am, however, grateful that Andhra province has, been conceded and will be provided for in the Constitution. The greatest achievement, however, of our Constitution, is its secular character, and the secular State that emerges therefrom. We have achieved this secular character of the State and we have provided for it in the Constitution. But the clouds are gathering and are threatening to darken the secular character of the State and obliterate it. I only pray and trust that the progressive forces of this country, under the guidance and leadership of our great and beloved Prime Minister will clear away those clouds and shall not allow our country to pass once again through that destruction and misery which most of the nations of Europe and Asia had to pass before they could accomplish this great achievement of a secular State.

I may mention also one thing which may not have been realised by many Members of my own community. By giving up the reservations whatever we might have lost we have gained tremendously, because that has mainly contributed to the establishment of and the making it a fact, the secular character of the State on which depends our very existence as a minority or community. I may here raise my voice for an unfortunate section of my community—the Harijan Christians. They are untouchables, Sir, and they are treated so, not only by the caste-Hindus with whom they have to deal every minute of their lives, but I am ashamed to confess it, they are treated so even by their Christian brethren, and the parents of these children come to us with tears in their eyes to tell us that their children have been driven out of the schools and deprived of their education because scholarships had been stopped for them, while the

[Mr. T. J. M. Wilson]

children of their brothers and sisters who are non-converts are continuing their studies. I do not need to plead the fundamental right that no discrimination should be made against them on the basis of religion, but I only beg to the Drafting Committee and the Government to take pity on them and not to remove that taste of education from their mouths.

I now come to the criticism that is levelled against the Constitution that it has not provided for or conferred anything on the common man, that it has not provided for social and economic justice. That, I submit, Sir, is an erroneous contention, because it is based on an erroneous conception of the scope of the Constitution. A Constitution has a limited scope. Its main function is to provide for a machinery of Government, and this Constitution has provided for a machinery of the government, whatever its character. And whatever the privileges or rights put in certain chapters are only those rights and privileges which we have achieved so far. The Constitution embodies and gives sanction only to those rights that are achieved. That is the basic conception which I want to emphasise, because otherwise, if we had embodied certain rights in the Constitution which we have not achieved so far, that would have given a distorted, dishonest and hypocritical picture of the country as a whole, and what is more, the Constitution would have been simply unworkable. Therefore, the Constitution has a limited purpose, and in spite of certain ugly features of the Constitution, for example the provision for the protection of property as a fundamental right, it would not and shall not prevent the country, as Mr. Santhanam has pointed out, from achieving socialism.

Much has been said of liberty and freedom. Let us strive and march forward to that liberty which is not only negative, which is not only the absence of any restraint, but to that liberty which is positive, which is the creation of those conditions which would give the necessary opportunity to every man and woman of this country to develop his or her full personality, free from any want or fear. And I may also say this that the price of liberty is not vigilance, but work and more work, and more production so that humanity may march forward and achieve its goal of happiness and freedom and democracy.

Shri H. Siddaveerappa (Mysore State) : Mr. President, it is with very great pleasure that I associate myself with the chorus of tributes paid to the Drafting Committee in general and to its Chairman in particular. Sir, for the last several days, the merits and demerits of this Constitution have been discussed so threadbare that it is not possible to cover any new points. Almost all the points have been covered.

One outstanding point that comes to my mind when I see this Constitution is that from the first time that this Constituent Assembly met, it will be seen that several changes have been introduced into it, much of which having been influenced by what is called compulsion of events. It can be seen that right from the beginning the very tenor of this Constitution is to have a strong unified Centre, and it is well that, situated as we are we could not think of any other form of Constitution, though, of course, in name it is a Federation. It can also be seen that the powers have been so much centralized that this Constitution is more in the nature of a unitary Constitution than a Federal Constitution. The only question is whether the Centre has been made so strong, that there is what is called over-centralization. Now in the opinion of some the Centre is made so powerful and strong that very little incentive is left for the component parts and I am also prone to believe in that opinion. The Chairman of the Drafting Committee himself, when he made his introductory speech on 4th November, 1948 with regard to the Centre being so strong, said :

“It cannot chew more than it can digest. Its strength must be commensurate with its weight. It would be folly to make it so strong that it may fall by its own weight.”

In the opinion of some the Centre has taken almost all the powers and that the Units are left with little or no incentive. That is with regard to the character of this Constitution, whether it is Federal or Unitary.

Coming as I do from an Indian State, I cannot help making a special reference to the nature of the Constitution with regard to the States. It can be seen that in this country nearly one-third of its territory, with 27 per cent of its population, was covered by 562 Indian States having a population of 80,880,434. These States had varying degrees of political progress and economic advancement, some comparing very favourably if not better than some of the advanced provinces in this country, and some being very backward. The question of these Indian States was one of the baffling problems for this infant independent country. Even during the time of the Britishers they took several decades to consolidate the States and to bring them to a certain form. With regard to the States the Butler Committee report stated:

“Politically there are two India’s—British India governed by the Crown according to the Statutes of Parliament and enactments of the Indian Legislature, and the Indian States under the suzerainty of the Crown and still for the most part under the personal rule of the Princes. Geographically, India is one and indivisible made up of pink and yellow. The problem of statesmanship is to hold the two together.”

Even the Cabinet Mission’s plan as announced on 15th May, 1946 envisage two vital changes with regard to the States, namely, that after the attainment of independence paramountly would lapse and that the States would retain all the other subjects except those covered by Defence, Communications and Foreign Affairs.

It will be seen, after the Britishers left this country, technically, of course these 562 States were as free as any other part of India. It is under this period of stress and strain in some quarters, though of course very few, that some fissiparous tendencies raised their ugly heads and they claimed that they were independent, though that tendency was nipped in the bud. It is in this period that the States Ministry of the Government of India was formed on 5th July, 1949, when Sardar Patel observed :

“The States have accepted the basic principle that for foreign affairs, defence and communications, they would come into the Indian Union. We ask no more than accession of those subjects in which the common interest of the country is involved. In other words, we would scrupulously respect their autonomous existence.”

It is a very fascinating and interesting study because history is being written before our eyes. It is not possible to perceive how within these two years, not only all these three subjects, but in all vital matters, this whole country from Cape Comorin to the Himalayas has been brought under one administration and Government and certainly, Sir, the credit must go to that great leader, Sardar Patel, who has brought about this change a very bloodless revolution. No one could have believed that such a change was possible within an incredulously short period of two years : Not only that, in some advanced States Constituent Assemblies had been started and they were going on with their work. In defence to the wishes of the States Ministry, those Constituent Assemblies had to postpone their work just because it was thought desirable that there should be one single Constitution for the whole of India, whether they are provinces or whether they are Indian States. Under those circumstances it was found possible to have a Constitution of the so called Indian States which are very few in number now, as one can see from part B of the First Schedule. There is a single Constitution for the whole of this country governing their relationship and it may not be far wrong if I say now that this change would not have been so easy, had it not been for the unstinted support given to them by the Princes and the subjects of the Indian States. It has been acknowledged in wholesome measure by Sardar Patel himself on occasions more than once, that the patriotic feelings of the subjects and Princes were also responsible for bringing about this bloodless revolution within so short a period of time.

[Shri H. Siddaveerappa]

It can be seen that in the case of some advanced States, due to financial integration, they have been subject to some losses of revenue, particularly in Mysore where due to financial integration they have lost a considerable portion of their revenue. Still, the people have cheerfully borne all these temporary inconveniences and in some cases permanent also, in the larger interests of this country. When all this is said, I want to know what justification is there for bringing about discrimination by way of article 371. Besides when the peoples of the States have, made considerable sacrifices and without any resistance they have fallen in line with the whole of India, was there any necessity for an article like 391—just a kind of good—behaviour clause, wherein there is general supervision and control for a period of ten years with regard to all the States ? Perhaps I am not able to find out the reasons. There may be weighty reasons, but the feeling in the minds of several people in the States is : What is it that we have done to be reduced to this level? Is this the reward for the sacrifices made by the people of the States for falling in line with the rest of the country ? Anyhow, so far as Mysore and Travancore and Cochin are concerned, there is a promise that they will be exempted, though the people in those States would have been, far happier if it was statutorily recognised that there is no need for a provision like that. Let me sincerely hope that this article 371 will remain a dead letter.

Lastly, I also join the chorus of tributes paid to you, Sir, for the very worthy manner in which you have conducted the deliberations of this House.

Shri Kamlapati Tiwari (United Provinces: General): *[Mr. President, Sir, during the Third Reading of the Constitution we have had a discussion for the last six days. The Constitution has been fully discussed and no aspect of it remains which the Honourable Members have not said something or the other. Its merits and demerits have been fully discussed. Everything has been said in regard to its merits and its specialities and I find that Everything has been said in regard to its demerits and its shortcomings too. I admit that after a discussion of six days I cannot say anything new in regard to its merits, or demerits. Even then Sir, I have gathered courage to take some time of the House because this is an important and historic occasion and its very idea is inspiring to us. It has special significance for soldiers like us who look the pledge of serving the country and the nation twenty five to thirty years back sitting at the feet of revered leaders like you who initiated us into that service. We shall possibly never have such an occasion again. Therefore I too could not resist the temptation of saying something on this occasion. I am grateful to you for having given me an opportunity of saying a few words. Sir, many of us have had a dream picture of our nation and of the future of our country for the last thirty years. We nourished an idea in regard to our country and its future. Our dream and our idea was that a day would come when we would ourselves be able to shape our destiny without interference from any quarter whatsoever. This dream and this idea inspired us for the last thirty years, and gave us strength to advance forward in our struggle for freedom according to our intelligence and our power. After a period of thirty Years it appears that our dream is coming out to be true to some extent and our idea appears to be materialising. We saw our country achieving freedom and our idea of being able one day to shape our destiny without outside interference is going to materialise. We can think ourselves fortunate and blessed because the Constitution of our nation and of our free country is being moved for acceptance in our presence. So far as the relation of the merits and demerits of the Constitution is concerned, I would like humbly to submit, Sir, that I was not satisfied with the trend of the discussion which took Place during its course. I saw that one Honourable Member after another rose to eulogise the merits

*[] Translation of Hindustani speech.

of the Constitution and to congratulate and praise each other. I could not understand this mutual praise and mutual congratulations. The Constitution is the result of the collective effort of all. It is not worthy of us to praise each other and to congratulate our own selves. We are Indians and we take pride in our culture. We can be worthy of our culture only if we abstain now by not praising our merits and by not taking pride in the good things that we might have done. After all what have we done so as to deserve this self-praise and mutual congratulations. How has the necessity arisen of patting each other? The people of our country confided in us and returned us to this House with the hope and faith that we would chalk out such a line for shaping their lives and their future which would not only enhance their prestige but would also uplift them. When the country returned us and gave us the charge of shaping its destiny, it did hope that we would frame a constitution which would be noteworthy for its merits and specialities. You have indeed framed a constitution which has many good features and specialities. Whom should we congratulate and what for? The country gave us the authority for shaping its destiny. If we have successfully fulfilled our responsibility and done our duty, we should not praise each other for it. We only discharged the responsibilities that we had taken upon ourselves. Instead of ourselves praising each other we should have left this task for the country. The nation will judge whether this Constitution has any merits and whether we deserve any praise for it. We shall have reason for self gratification only when the nation praises us. Therefore without taking recourse to self-praise like my other friends I straightaway want to put before the House a short analysis of the constitution itself. When I think of the most noteworthy feature of the Constitution and its greatest merit, three things present themselves before my mind. Those of my friends who have only eulogised the Constitution have only repeated these things. It has been said that the Constitution has provided for adult franchise. It has also been said that untouchability has been abolished by the Constitution. The third thing which is being taken pride of, is that separate electorates have been abolished and provision has been made for joint electorates in the Constitution. These are the three specialities of the Constitution which have been emphasised by the speakers and it is for these that they have been congratulating each other.

Sir Alladi too, who is a great scholar of jurisprudence. repeated in the course of his speech this morning only these three features of the Constitution. Sir, I humbly submit that these are not such specialities as may justify our taking pride in them and feeling elated about them and taking recourse to mutual congratulations. When the country returned you and sent you here for framing the Constitution, if you had not included these broad features in the Constitution, what else would you have included in it ? The principle of adult franchise is a well known principle and its usefulness has already been demonstrated elsewhere. Therefore there is not much sense in taking pride for having forwarded it. If this great democracy, which you are going to establish, is not based on the rights of the people that is to say on adult franchise, on what else will it be based ? Adult franchise is gaining ground everywhere in the world and it is now being recognised that the structure of democracy can be raised on this basis alone. Besides, we have always been declaring that we have to establish true democracy alone in India. Have we not declared that we would establish peoples democratic government in India and have we not been returned on that basis ? If we had not provided adult franchise what else could we have provided for ? We have not done such a thing as may justify our self-praise. We accepted a well recognised principle and have done but our elementary duty. Any person or any other party on being returned to this House and on taking upon itself the task of bringing about a democratic order, would have been compelled to provide for at least adult franchise. It was after a successful revolt that we came here. We led that revolt. Then,

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if we have provided for adult franchise, what novel thing have we done ? I would say that if in our place had been the sycophants and diehards of the old order or even the capitalists engaged in the task of framing the constitution, they too would have at least granted adult franchise. So much for adult franchise.

I shall now take up the other speciality of the Constitution. which has been constantly referred to and for which we have resorted to self-praise and mutual congratulations. It is the abolition of untouchability. We very proudly say that through this Constitution we have totally effaced untouchability. Sir, it is a surprise to me that we take pride on the abolition of untouchability. Sir, it is we consider it a great success. I want to ask whether we have abolished untouchability only today? By declaring untouchability as illegal in the Constitution have we done anything as can bring great credit to us ? Have we done any great and novel thing? Untouchability was abolished long ago when Bapu raised his voice against it and revolted against it thirty years back. When Bapu began to play a role in our lives, he revolted against untouchability and said that it was a blot on India and that it should be removed. That powerful and explicit voice ended untouchability years ago. Today we say that we have abolished untouchability through this Constitution. I ask had we not done what Bapu had asked us to do and what had met general approval, how would we have kept face with our people ? Therefore it does not appear proper to me to say that we have done a great and unique thing. I think that it is altogether unnecessary for us to take pride in the abolition of untouchability, in the provision for adult franchise and in a third thing which has also been characterised as great achievement.

I think Sir, that we have nothing to be proud of in the abolition of separate electorates either. Separate electorates were responsible for the ruin of the country. Our history of the last one hundred and fifty years bears testimony to the fact that no other problem has been so much responsible for ruining the country as that of separate electorates. Separate electorates alone gave birth to communalism. Separate electorates alone gave birth to two-nation theory. Separate electorates alone gave birth to the idea of dividing the country which ultimately culminated in the partition and mutilation of the country. All this was brought about by separate electorates alone. Would we have provided for separate electorates even now? We have not done anything great by giving no place to that system in our Constitution and we need not praise it for that. I think Sir, that it is futile to eulogise our achievements and the merits of this Constitution and to take recourse to self-praise and mutual congratulations. Instead of taking recourse to this practice we should rather consider at this occasion what we have been able to do and what we have not been able to do, so that the country may have a knowledge of what remains to be done and at a suitable time we may be able to correct our mistakes. We should acknowledge our mistakes and should apprise the future generations of the shortcomings and defects of the Constitution which need rectification. We should pay particular attention towards this. I think that a person or a nation can progress only when it pays attention towards its shortcomings. Gandhiji taught us to pay attention towards our shortcomings and weak points and to turn our eyes away from our merits. He asked us to see our defects to admit them and to make effort to remove them. He said that for the development and welfare of a person or a nation it was necessary that an error should be accepted without any hesitation and that to see an error one should look at himself. Therefore to enable the country to make progress it is necessary to see the defects of the Constitution so that they may be removed. It is also necessary to see whether we have not left out such things as were greatly needed

by the country. Sir, I humbly submit that when I examine this Constitution from this point of view I find that though we ourselves are responsible for framing it, it does not satisfy us, nor does it fulfil our necessities. It may be that I am saying things which I am not authorised to say but at present every one should give primary importance to the interests of the country and should express his views accordingly. This sentiment alone has given me courage to refer to these matters. I realise that the conditions obtaining in the country have influenced us. We were influenced by fears and doubts and these have been reflected in the Constitution. This fact may be responsible for its shortcomings. But whatever may be responsible for them, we have to see them and Point them out. Our scriptures say :

‘शत्रोरपि गुणा वाच्या दोषा वच्या गुरोरपि’

‘Speak of the merits of the enemy also and surely point out the defects that may be in your teachers.’ Therefore if we discuss this matter from this point of view, it should not be understood that we are showing disrespect to any teacher. No particular person or committee can be held responsible for the shortcomings. We are all equally responsible for the shortcomings. Therefore Sir, I want to draw your attention to some fundamental defects which have been left over in this Constitution. Many petty mistakes too can be pointed out but I would not refer to them. I have not the time to discuss in detail in my own humble way all the clauses and sub-clauses to which I object. I shall only point out the fundamental defects in the short time, that you have kindly permitted me to speak. The first fundamental defect of the constitution appears to be that it is terribly centre-ridden. It appears to me that the polity we have provided for in the Constitution will necessitate the centralisation of all power and authority. I consider this type of centralisation to be defective and dangerous. I think that centralisation will necessarily give rise to tendencies which may prove to be dangerous. Moreover, the leader whose foot steps we have been fortunately—following for the last thirty years, gave us a viewpoint, an idea and an ideology. Our Bapu was all light and he told us that centralisation, whether in political field or economic field necessarily deprives the masses of their political and economic independence. This was the new idea and new ideology that he handed over to us. He said that true democracy rose not from the top but from the bottom. Power and authority should not be centered at the top but should be distributed among the people at the base of society. Then alone can true democracy be established and then alone can people enjoy freedom. The order that we are going to establish has its head downwards. A tree is being planted with its roots above and its branches spreading downwards. There may be a spiritual tree with its roots upwards and branches spreading downwards but in the political field any order with its base upwards and its top downwards cannot be instrumental in the establishment of true democracy. Centralisation is a terrible curse of the present times. It was the centralisation of production which gave birth to capitalism which in its turn put an end to economic freedom in the world. In the political field the order that came into being on the conclusion of the French Revolution disappeared with the establishment of centralised forms of government and with the centralisation of power and authority. If you look at the present day Russia you will see that although Russia claims to have established the greatest democracy but actually it has not been able to respect democracy. The reason behind it is that a terrible demon in the form of centralised power dominates the people and crushes their individuality and their freedom. You should remember that if you bring about centralisation in India it would lead to the maintenance of rights from a centre and necessarily that in its turn would involve that power be more and more vested in the centre. Everyone knows that effective power in the hands of the centre can only be based on military strength and the concentration of military power is the sure road leading to the complete destruction of popular rights. This is an historic truth. Our

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Constitution obviously presents this danger. The circumstances may have compelled us to provide for a centralised form of government but the danger is there and it is necessary to take notice of it. It was with this realisation that Gandhiji had taught us to oppose centralisation. He told us that for the establishment of true democracy the means of production should be decentralised and its form too should be of a decentralised nature. The society which is formed on such foundations should also be of a decentralised nature and the Government of this society should also be of a decentralised form. The rights should be in a gradation from below upwards and the government should enjoy only those rights as are bestowed upon it by the people. We have been told that this is a people's constitution and a common man's constitution. I humbly submit that it appears to me that this is in the least a common man's constitution. Power has been centralised in it at the top although it may have well been said in it that power is vested in the people. You should pay attention to it.

Moreover, I find that there is nothing Indian in the Constitution. It appears that the Constitution has been framed only to meet the exigencies of the times. We were influenced by the conditions obtaining in the country and were obsessed by the fear that some people might spread anarchy and emergency may arise at anytime and our freedom might be endangered. We were all along influenced by this thought and we framed our Constitution accordingly. No doubt we are confronted with this situation in the present transitional period. When an old order crashes, when an established system collapses it sends vibrations and quivers even into the earth. It is but natural that at such a time of political earthquake fear and anxiety should grip the minds of men. Before our eyes has collapsed a great and mighty empire. It is not surprising, Sir, that there should be at such a time fear and anxiety in our hearts, but I do deeply regret that there should have been reflected in the provisions of our Constitution.

My other regret is, Sir, that we have drawn inspiration mainly from foreign Constitutions alone. We have drawn upon the Constitution of Australia. We may have even borrowed from the Constitution of Canada and we may have even influenced by the unwritten Constitution of Great Britain. We also been discussing rather warmly whether the Constitution under consideration is federal or unitary in character. But, Sir, we have not cared to cast even a glance to the historic spirit and culture of India or have we taken into consideration the Indian approach to life. While passing this Constitution we did not in the least pay attention to the political philosophy and situation of this ancient country—the oldest among the nation of the world—and which has occupied a prominent place on the stage of history. History is, Sir, a witness to the great and glorious experiments made by our country in than sphere of politics. But, Sir, we turned a blind eye to all the facts of our History. It does no credit to any one here to say that majority rule did not exist in our country. History is a witness, Sir, to the fact that ours was the first country in the world in which was established the system of majority rule if not of pure Democracy. The entire north west region of our country the land of the Panchabs—was studded with Republics in the historic epoch noted for Alexander's invasion of our country. The state of Kapilvastu, where Lord Budha was born, was also a republic. Again there was the great Republic with which Lord Budha had very intimate contacts. The glory of these republic continued for thousands of years in this country. Even in the Vedas, Upanishads and the Brahmanas we find fully developed concepts of such politics as the samrajve, virajye and Arayke, Rajiye. I, therefore, fail to see how any one here can say that the concepts of republics, Majority rule and democracy are entirely foreign to us. I submit, Sir, that there has been a whole body of political traditions in this country. If you looked into the

Mahabharat and gave thought to what the great Vyas has put into the mouth of Bhishma in that great epic you would find that there is contained a constitution polity complete in itself and a political philosophy ripe in wisdom. But the question I ask, Sir, is 'Have we cared to give even a passing thought to all wisdom?' Principles and provisions of alien origin are to be found in this Constitution, What is worse, Sir, I can safely assert notwithstanding the loud protest of some friends here that the dark shadow of the Government of India Act is to be found lying heavily on this Constitution. No one can deny here that the dark shadow of that Act which we had denounced so much, is to be found in every page of this Constitution. We have committed Sir, a fundamental error in keeping this Constitution quite unrelated to the historic culture, traditions, the national genius, the national sentiments and self of our country. I would urge you to remember that this cultural divorce between the Constitution and the country has not only made entirely alien but also lifeless in character.

This third basic shortcoming of this Constitution is the limitations and restrictions it imposes on Fundamental Rights, credit is being taken, Sir, for the provision with regard to the abolition of untouchability. The critics are sought to be confounded by the naive question "Have we not guaranteed the Fundamental Rights by This Constitution?" But at the same time to which I would like to get a reply is whether it is not time that we have imposed many restrictions on the Fundamental Rights. Is it not also true that there are many clauses in this Constitution which infringe and encroach upon the Fundamental Rights of the citizens. How could we do all these unless we drew an inspiration from the Government of India Act. It was the policy of the British Government to break to the heart which they promised to the ear—and I believe we, have followed in their footsteps. I may concede that all that was probably necessary for the security of that State. My Complaint, however, that while doing all this you should not acknowledge it. Gandhiji had taught us that the security of the State cannot be ensured by the arms and denial of rights of the people. Bhishma had also advised Yudhishtira to remember that the people should be fully protected and kept free from the danger of starvation and nakedness and other types of sufferings and wants. The state that we should establish should be like the same which while it takes the price of food also gives it back eightfold for the benefit of the people of this earth. Such a state would not need arms for its security, nor would it need an army to defend it. Bapu had also taught us that any state which seeks to retain its existence by the use of force alone would not be able to maintain itself for even its own arms, would turn against it. I repeat Sir, that if we would establish a state which relies on force alone for its continued existence it would not be stable or durable. Any state which rests on a denial of the basic rights of the people cannot last for long. If a State gathers power by depriving people of their rights, it sooner or later finds that it has bargained for a frankenstein for itself. As the proverb runs—Nothing corrupts like fouls—and this is but natural to man. It is no doubt true that the, reins of power are today in the hands of leaders whose life has been passed in the service of the country. None need entertain any fears about their acting improperly. But it may well be that this power may fall into the hands of people who misuse it. That is the danger.

The great defect of this Constitution is that it secures nothing to the poor and have votes of this country. Even the little assurance contained in the Directive Principles is not adequate. Even there it is said that the State would do all this within the limits of its economic capacity. It does not in the least guarantee that there would be no poverty in the country and we would not have a single person begging on the streets. As there is no guarantee against unemployment nor do I find a duty being laid on the State to provide work to it, citizens. No doubt we have guaranteed a salary of Rs. 10,000 for the President of India. we have also charged the salary of the Accountant-General, and former

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services on the consolidated fund of India by means of this bulky Constitution. But we have not made the least provision as regards the pay to be given to the peons nor have we made any provision with regard to the minimum salary that can be given by the State to its employees. For example why is it that we have not laid down that every employee in this country would be paid a salary of not less than Rs. 75. If we had done any such thing we would have won the heart of the people of this country. But you have paid attention only to the people at the top and not to them who are at the bottom. It is for this reason that this Constitution appears to be quite futile and lifeless. The fact is that it is not inspired by any substantial ideas.

We accepted that there should be one official language for this country but at the same time we have taken care to see that that language which is going to be our national language may not become the official language at an early date. Sir, my submission is that we paid attention to the question as to what would happen to the services if Hindi became the official language in less than fifteen years but we remained blind to the consideration as to the integral relation of language with the consciousness and sentiments of the people. Language is the vehicle of our sentiment and belief. It is, therefore, the basic element of culture—and culture as is well known, is the drawing power behind the progress and rise of a country. Such a deep relation exists between culture and language, that there cannot be any foundation for any creative activity in its absence. But we paid no heed to this fundamental truth and are still fondly longing a foreign language to our bosom. What is the language that you have employed for drawing up your Constitution? Whatever else may or may not have been possessed by our country it is a fact that it never backed a well developed language and script. History is a witness to the fact that all the Asiatic countries designed their scripts on the basis of our script. The literature of our country is so great that the entire world pays its respect to it, what a shame it is that the Constitution of our Country is being drawn and passed in a foreign language.

These are defects to which we should attend to. I felt that I owe a duty to my country to my leaders, to this Constituent Assembly that I should place my sentiments before you so that we may acknowledge that though our Constitution may be desirable yet it is not free from blemishes.

Sir, I have briefly placed my sentiment before. But I would like it to be understood that I have despair in my heart or I want to abate in any way the work that has been accomplished so far. I have talked of our failings only in order that we may be able to say to our people that our work, whether good or full of defects, was before it. I felt that we should frankly accept that our work may be full of defects and failings. We should make it clear that we are aware of those defects. We must say that we know what are defects but we also know the direction towards which we are moving and that when circumstances would permit we would remove those defects and overcome these failings. Sir, even though there are defects we should express our satisfaction at what we have some fondness for this Constitution because we have ourselves framed it in all good faith and moved by the love of the country. We are happy at what we are today. I feel that in comparison to the day when thirty years ago we started on our adventure on rocks and shoas to reach the temple of freedom, the present day is very beautiful for us. We have been witnessing to the humiliation of our great and ancient country lying under the hand of foreigners. That was our epoch in the life of this country when humanity was grasping for life, when our mother our country was lying despoiled, trampled and outraged before our very eyes. That was the age when despair darkened our hearts and we had lost all hopes for our future. Suddenly we perceived an angel descending into our life. We felt the magic of

his words and life and hope came back singing back even to the ashes and bones of this country. His fire and faith breathed into our dead souls a new life. We heard the thunder of revolution in his sweet voice, and the call for battle and sacrifice in his mild words. He gave us a new message and a new and novel technique of struggle and revolution. His was a unique motto of war—the war of Dharma of Truth, of humanity and light against the forces of untruth, injustice, animality and darkness. There came the day when we saw that the mightiest empire crumbled into dust and nothing under the blows of that man. We saw the miracle of nature that went to step in one night awaking to find the sun of independence and freedom already smiling in its life. AR this miracle has happened before our eyes. It is due to that miracle of that great man that we have been able to frame this Constitution today. It is but natural that we should have tender feelings for this product of our labours. A great event in our history comes before my eyes today. Twenty five hundred years ago another Constitution had been drawn up for our country. that was the age when Chandragupta Maurya had thrown out the Greek conquerors from this country, re-established its glory and self-respect, and established the empire which remained a glory of country for generations. It was in that age that Kautilya had drawn up a Constitution which has remained a brand product of the Indian mind during all these centuries. It is after that long period of twenty-five hundred years that we are engaged again in this task of Constitution making. It may well be that this effort of ours may be full of faults, or may be it has its merites. But we feel it a duty to dedicate it to the memory of the Father of our Nation. We do so in the hope and faith that a day will come when we shall have succeeded in establishing such a pattern of life as will be a message of hope and cheer to the entire mankind.]*

Shri Dharanidhar Basu Matari (Assam: General): Mr. President, Sir, I feel I cannot leave the Constituent Assembly to return to my province, Assam, without adding my own tribute to Dr. Ambedkar and the Drafting Committee for their great achievement in producing this Constitution. I think I am right in saying that everyone has some or the other criticism or grievance to air. The Constitution does not and cannot satisfy every section from all points of view, but, taking everything from an All-India point of view, the Constitution is not disappointing and, in fact, the best that could have been framed under the difficult circumstances after Partition. It is not what has been put down in cold print in the Constitution, in the Articles, in the Schedules, that will matter. It will surely be the spirit in which the purpose of the Constitution is executed. If all sections co-operate honestly and unselfishly, I am certain India will progress along right lines.

Talking of progress, let me make it quite clear that no real progress is possible if large parts of our nation are deliberately kept behind and backward. The advanced communities will have to make special efforts, particular sacrifices if the backward classes are to come up. I am not one who believes that the backward classes can be brought to the general level in ten years. That is impossible and it is unfortunate that ten years as a limit have been incorporated in the Constitution. But, much can be done in the ten years also, if undivided attention and adequate funds are earmarked for the advancement of the backward classes.

Assam Tribals have much to be thankful for in the Constitution. One has to admit that there is much scope for tribal development for the so-called autonomous districts where there will be tribal councils and so forth. But I am not happy about tribals in Assam who are in the plains and the tea gardens. There are millions of them outside the autonomous districts. What will be their fate? Do they not need any protective and special treatment? I am none too happy about the tribals in the Assam plains. I know only too well how they have been neglected and exploited in the past and, to my mind, they will continue to be suppressed, unless there is special arrangement made for

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their advancement. The truth is that tribals have to be helped against themselves. As things are, they cannot complete with the other elements of the plains.

The tempo of advancement will have to be faster. Take the question of appointments. It is no good saying that so many tribals have been recruited as forest rangers. Tribals must be recruited to all branches of service, from the lowest to the highest, not only in the provinces but also at the Centre. Not only should there be a minimum quota fixed for their appointments, but their promotion must equally be seen to, so that they do not stick where they begin. For this to happen, the advanced classes must make a sacrifice. They must recede and tribals must come forward. When the advanced communities here say they want the tribals must come to their standard, do they really mean that they are willing to make way for the educated tribals? On the basis of competition, there will be no improvement. The sections that have captured the services will see to it that their superiority is never threatened or endangered. Arguments about efficiency of administration are, to my mind, just dodges to perpetuate class or territorial interests. During the British regime, certain people were the favoured lot and they got the jobs, the contacts and the privileges; there was a distinction between martial and non-martial races. In Free India, there is no room for such invidious distinctions. I know the Constitution does not satisfy people who have been used to preferential treatment. To such people democracy means something different.

Sir, the overall picture is not without hope. I do believe the Constitution can be worked in a democratic way, if the leaders respect the rights of others more than their own. Tribals will certainly do their best to contribute their part in the working of the Constitution and I hope others, will not stand in their way.

All of us know, Sir, our Father of the Nation, Mahatma Gandhi wanted to establish a Ramrajya and to me, it appears that he wanted a world where there can be no discrimination between the poor and the rich, the wretched and happy, and we are proud to be his disciples.

Shri Ari Bahadur Gurung : Mr. President, Sir, I associate myself with my colleagues in congratulating the Chairman and other members of the Drafting Committee for having brought this stupendous task to a successful conclusion. I have only a few observations to make. Firstly, the criticism of the Constitution that it does not provide for the establishment of socialism is as irrelevant as the complaint that it is likely to open the way to dictatorship is futile. The real test of democracy is to give the right to people to decide for themselves the nature of the Government they would like to have. The question of dictatorship or totalitarian communism will depend entirely upon the manner in which the people will work the Constitution. The Constitution will be subject to a continuous series of modifications according to the will of the people. Such provisions have been provided already in the Constitution. Sir, I personally feel that a Constitution is something of a sacred character which inspires future generations. It is the embodiment of the living faith and philosophy. Therefore we must not for, at his gospel. To end with, Sir, I thank you for giving me an opportunity to express my humble views on the Constitution. Jai Hind.

Shri Dip Narayan Sinha (Bihar: General) : *[Mr. President, at this occasion when we are going to accept a Constitution for India, I most humbly want to pay my homage to the Father of the Nation, Mahatma Gandhi, whose hard penance and extraordinary skill relieved us of our bondage. At the same time

*[] Translation or Hindustani Speech.

to pay my homage to those innumerable men and women who joined hands with us in our struggle for freedom, underwent many sufferings and made great sacrifices from time to time. The Constitution which we are going to accept is an unparalleled thing in the history of our country. Our national life will form itself on the basis of the provisions of this Constitution. Therefore I attach great sanctity and significance to this Constitution. I wish that every Indian should have the same feeling about it. I know that it has its shortcomings and there is much room for improvement. But it has its beauties too and any country can take pride in them. Now we should with all sincerity strive to work this Constitution and to put it to the greatest advantage for the country. If we sincerely strive to work this Constitution, we would be able to remove its shortcomings and whenever it would be necessary to make an improvement we would be able to do so easily. I now want to say a few words on this Constitution from a common man's point of view. When a common man from the countryside would turn over the pages of this Constitution he would not like to see the beauties of this Constitution or to go very deep into it. He would like to see whether things to meet his necessities have been provided in the Constitution or not. He would like to see whether this Constitution guarantees to him nutritious food, cloth, health and proper education. I would like to point out that the people of the villages and common men would be unable to find such a guarantee in this Constitution. No doubt it has been laid in the Constitution that during ten years such arrangements will be made for education as to enable all children reaching the age of fourteen to get educated. There is no provision for people of a higher age. Moreover, there is no guarantee for food, cloth and health in the Constitution. I know it and everyone knows it that India is a country of villages and our people live in villages. I can say that extensive countries of the world today have a preponderance of cities but my country is a country of villages. Our culture and civilization is one of villages and whatever remains of it has been saved by the grace of villages alone. Let alone giving a dominating position to the villages in the Constitution, they have been given no place whatsoever. No doubt I have seen that in a small article mention has been made of village panchayats. But it is nothing more than a reference. Our Constitution is silent about the shape that our villages will assume and the place they will occupy in future. The picture of the administration and of the society drawn in the Constitution has no place for the villages. I wanted that in administration and other matters the villages should have been given a predominant place but this has not been done in our Constitution. I consider it a great shortcoming. I think that this is due to the fact that much thought was not given to it. But no doubt it is a basic shortcoming. If we want that our country should make great progress, happiness and peace should soon reign supreme in this land, we will have to give a predominant place to the villages in all matters. We will have to frame all the administrative and other schemes on the basis of the village. If we do not do so we will only add new chapters to our painful history of the past. I want that we should pay attention to this short-coming in working our Constitution and should formulate a nation building schemes on the basis of the village.

There is one thing more which looks very improper to me. When the struggle for Swaraj was launched, we were told that we could achieve freedom only with the weapon of non-violence and truth. Marching forward on the path of truth and non-violence we triumphed and attracted the attention of the whole world towards us. Now when our Prime Minister or our representatives go to foreign countries they are shown the highest respect. I accept that the persons who go abroad have such capacities as to command the respect of others. But I think that the chief reason for this respect is that we have broken as under the shackles of slavery with non-violence and have achieved Swaraj and with non-violence alone have banished the greatest foreign power

[Shri Dip Narayan Sinha]

from our country. However, that non-violence finds no mention in this Constitution. It would have been only proper if the whole constitution had been based on non-violence. Then alone could we have acted with success in future in accordance with our sentiments and thoughts. When we were engaged in the struggle for freedom and had to very often change our front, we were reminded of the unfailing strength of non-violence. Every resolution, every scheme and every election manifesto had the stamp of non-violence on it. But this voluminous book, which will shape the future of our country, makes no mention of truth and non-violence. It would have been proper to give a full chapter to non-violence so that the future generations and those on whom the burden of working this Constitution would fall, could have illumined their path with it and gone ahead to build their nation. However, the Constitution has now been framed and will be accepted in two or three days' time. I now appeal to our leaders and to the nation that although the Constitution makes no mention of non-violence but in bringing it into force non-violence must be the basis. If we forsake non-violence we would not only harm ourselves but would hurt the other people of the world also who are looking up to us with the hope that after some time we would be able to establish peace in this violence-torn world. Therefore I request once more the leaders and the people of this country not to be unmindful of Truth and Non-Violence in working the Constitution.]

Mr. President : We shall adjourn till 10 o'clock tomorrow.

The Assembly then adjourned till Ten of the Clock on Thursday the 24th November, 1949.

CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 24th November, 1949

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

Mr. President : I understand some new Members have come—Members from Vindhya Pradesh. They have to take the pledge now and sign the register.

The following Members took the Pledge and signed the Register :

- | | | |
|----------------------------------|---|------------------------------------|
| 1. Captain Awadesh Pratap Singh. | } | United State of
Vindhya Pradesh |
| 2. Shri Shambu Nath Shukla. | | |
| 3. Pandit Ram Sahai Tewari. | | |
| 4. Shri Mannulaji Dwivedi. | | |

DRAFT CONSTITUTION—(Contd.)

Mr. President : We are now to resume discussion of the Draft Constitution. I desire to point out to honourable Members that although 77 Members have so far spoken on the motion of Dr. Ambedkar, I have got 54 names still on the list and we have only this day and perhaps one hour tomorrow for this purpose. So all these Members cannot possibly be accommodated within these six hours or 6½ hours if they speak at the rate other Members have spoken and I leave it to them either to take, as much time as they like and deprive others of the opportunity of speaking or simply to come forward, speak a few words so that their names may also go down on record and let as many of others as possible get an opportunity of joining in this.

Shri Guptanath Singh (Bihar : General) : Sir, I want to make a suggestion. It seems a large number of Members are eager to speak. I, therefore, suggest that Members who are desirous of speaking here should be asked to submit their written speeches and those speeches be taken as read, as so many Members have read out their speeches.

Mr. President : There is no provision in our rules for taking speeches as read because they are all supposed to be delivered even when they are read. So I can only ask Members to think of others also and not to think only of themselves. As soon as a Member has spoken for five minutes. I shall ring the bell.

Chaudhri Ranbir Singh (East Punjab: General) * [Mr. President, Sir, before expressing my views on the Constitution, I would pay my homage to the Father of the Nation, Mahatma Gandhi, Netaji Subhash Chandra Bose and other patriots who sacrificed their lives on the altar of the country and suffered in various ways.

Mr. President. today many of our brethren complain that we have taken too much time to from the Constitution, but none can deny that at the time this Assembly was formed, India was under foreign rule and was divided into more than 600 units. There were many types of people and parties who wanted to divide the country. The changes that have taken place in this country during the last three years are unparalleled. During this period, our

* [] Translation of Hindustani speech.

[Chaudhri Ranbir Singh]

country was partitioned but despite this no one can deny that for the first time in History and under your Presidentship we are going to establish a single State of India, bigger and more firmly than ever.

Some friends may say that India was a comparatively bigger State under British rule, but none can deny that at that time there were 562 States in India, with their own systems of Government. No one can deny the fact that before 1857, the Britishers had attempted to establish a strong State by merging the States, but they had succeeded in merging only a few States, when there was a revolution in the country and the Britishers had to give up that idea. But under your Presidentship, under the leadership of our leaders like Pandit Jawaharlal Nehru and Sardar Patel and by following the path shown by Mahatma Gandhi, we have succeeded in persuading all these States to be parts of the Indian Union and our country which was divided into 600 units when this Assembly began to function, would now be having about 27 Provinces. I think within a short time there would be only 15 or 20 units in this country. In this way we have laid the foundation of a strong union by reducing the number of component units. None can deny that it has entailed delay but sufficient work has been accomplished during this period. I think, if we had completed the Constitution within a year at our first meeting it would certainly have contained provisions for communal reservations. That dispute; or rather disease has been cured and this could be achieved only on account of the tact of our leaders.

Mr. President, I wish to say a few words on some articles of this Constitution about which I hold very pronounced opinions. By providing for adult franchise in this Constitution we have liberated every Indian politically, and similarly by abolishing *begar* under article 17 and outlawing untouchability under article 23, we have liberated every section of the country socially. Further in regard to economic freedom, we have by accepting article 31(4) created conditions under which I hope the Zamindari system in India which is like a burden and stood like an obstacle in the progress of the country would be abolished within the next year, and thus we have solved this problem as we solved the problem of 562 Indian States under the leadership of Pandit Jawaharlal Nehru and Vallabhbhai Patel. I think that in my home province—Punjab too, which contains 10 per cent. big landlords as otherwise it is generally a region of small land holders this problem will be solved peacefully and thus we would also be able to liberate the landless peasants by virtue of this article. Similarly we would also be able to liberate the farm labourers as well as the factory labourers with the help of this Constitution. But Mr. President, the interests that I represent here, that is, the landed peasantry has been, I am sorry, given a set back under this Constitution. The peasant could obtain economic independence only if the principle could be accepted that he should not be forced to sell his produce below cost. Had we accepted this in this Constitution and made such a provision in this, we could have saved him from economic exploitation. But we have unfortunately accepted 19(f) which would have a bad effect on my Province. We have Land Alienation Act in our Province. I do admit that it suffers from certain shortcomings, but none can deny that lakhs of farmers who toil day and night have benefited from it to an extent that they have been able to retain their lands. I hope and trust that you would be the President of independent India and I believe this is the desire of a very large number of people. I hope, you will not reject my request as this Constitution authorises the President by an article to amend or repeal the law which may not be quite consistent with this Constitution. I therefore particularly appeal to you that even if you amend this Act which deals with lakhs of farmers, we have no objection if you permit Harijans who labour on the land to purchase land, but I request you not to create conditions

under which a person who has not been connected with the land may be able to acquire it. If that happens, there would, undoubtedly, be looting and robberies, and the advantages accruing from zamindari abolition would be nullified.

One thing which none in the House has mentioned and about which I feel most, is about the delimitation of Constituencies under article 327. I hold that the villages in India are very much backward, and if they are joined with the urban Constituencies, it will be very unjust for the rural areas. We could not accept Hindi as the National Language so early, because some people felt that they would lose their jobs thereby, but if you mix up the rural as well as urban Constituencies, you would be perpetrating serious injustice against those people who can neither express themselves, nor have any press or leadership. Under this Constitution they can be kept separate or mixed up. I hope that later on the Commission which would be set up for the purpose will keep the rural and urban areas separate.

I wanted to express my views on two or three topics further, but I do not want to take away the time of my other colleagues, and thus I conclude here.]

Shri Manikya Lal Varma (United State of Rajasthan): *[Mr. President, I, thank you, for the opportunity that you have kindly given me to express my views but I am sorry for the time restriction that you have imposed upon me.. While I have never so far taken any opportunity to speak here, my Friends Shri Brajeshwar Prasad and Shri Kamath were allowed on many occasions to express their views in this House. I would request the Chair to kindly excuse me if exceed the time limit by a minute or two.

First of all I take this opportunity to offer my thanks to the Honourable Dr. Ambedkar and the Members of this House. Now I come to some salient features of the Constitution. We have really taken a very wise step by providing adult franchise in the Constitution. Now we shall be giving this experiment a trial. Mahatmaji wanted that the village Panchayats should elect District Panchayats and the District Panchayats in turn should elect Provincial Legislatures and so on, for he thought that the Legislatures formed in this manner will be composed of persons who are capable of taking a correct view about our national problems. If the experiment of adult franchise proves successful it will be well and good for us. We raised the slogan of adult franchise and it will be a tragedy if we fail to work it out successfully. Mahatmaji also wanted that there should be adult franchise in India and we, must act upon his wish.

Now I would take the opportunity to express my thanks to our respected leader Thakkar Bapa for the progressive steps taken by him for the upliftment of Harijans whose cause he has been serving for fairly a long, long time. I extend my thanks to the Draftsmen of the Constitution for the honourable place, they have provided to the Harijans in the Constitution. The provision regarding the separation of the executive from the judiciary is a novel experiment and future alone can decide whether we succeed or fail in it. It is the dawn of our freedom and I hope our experiment will be successful. We owe our deep gratitude to our veteran and respected leader Sardar Vallabhbhai Patel for having absorbed the 584 independent States in the general set up of the Indian Union. It is really the States people who have had the worst experience of the tyranny of feudal lords and it is the States people who are feeling today the real glow of freedom—*Swaraj*. We the States people alone can feel the real worth of *Swarajya*. But I would like to say one thing in this connection. Sir, no doubt by eliminating these States, the cancer has been removed from the body of India but small boils in the shape of principalities or feudal estates still exist and we hope, Sardar Patel will remove them also at the earliest I possible, opportunity.

*[]Translation of Hindustani speech.

[Shri Manikya Lal Varma]

I say so because the conditions are horrible where feudalism obtains today. In Rajasthan where from I have come, there are two classes of jagirdars. One class thinks that the abolition of Jagirdari is now certain and it has already taken to agriculture and some other occupations. The other class of the jagirdars want to influence the Government of India by creating terrors. They have already started threatening the States Ministry of the Government of India and are spreading terrors with the belief that by adopting these means they would be able to save their jagirs. Influenced by this belief they have started committing dacoities. I beg to draw your attention, Sir, to this Men my feature and hope that they will be suppressed at the earliest possible moment. Now Sir, I would draw the attention of the Government of India as well as the Chair to the income, of the unit which I represent here. The Railways of Bikaner, Jodhpur and Udaipur are going to be taken over by the Central Government in April but for this no compensation is to be paid to the unit concerned. It will not receive any share from the income of these Railways. The customs duty is going to be abolished in my unit and this will entail a loss of six to seven crores of rupees to its Revenue. The United States is a newly constituted union and as such it should receive every help, support, and co-operation from the Centre.

I would like to draw your attention to one other matter also. In Rajasthan there are many large towns such as Bharatpur, Alwar, Bikaner, Udaipur, Dungarpur, Banswara in Kishengarh which were seats of the States' Administration where a number of persons, poets, pandits and men of letters and arts used to work under the direct patronage of the rulers of the merged States. Thousands of these workers have lost their jobs as a result of which the business in the States has come to a standstill. All possible steps should be taken to shift to these places some of the offices of the Government of India that are being shifted from Delhi, so that their economic condition may not deteriorate. The big plans and projects that are going to be formulated in India must be given effect to in the States also as the financial position of the States is lot such as to permit them to launch these big projects particularly when the income from customs and Railways will be taken by the Central Government. The scheme of opening training camps and launching Dam projects must be given effect to in the States also.

Now I would like to say a few words about the Rajasthan language which is spoken by fifteen million people. I shall place before the House a few specimens of this language just to show, how heroic Rajasthani is. When Maharana Pratap was at war with Akbar, Prithviraj of Bikaner learnt from some source that the Maharana being tired was going to submit to Akbar, he wrote him a letter in such poetry:

नाखू मूछां पाण, कन पटकं निज करदः दीजे लिख दी वाण, इजदों महती बात इक

(Should I now uphold my prestige or allow my body to be smashed to pieces ? Please give me either of these two directions.)

The Maharana sent him the following reply :

रिध्य रखसी अण, इण तन सूं इकलिंगः आगे जारि अगसों, पाची बीच पतंग

(Let God Shiva always guard my honour. The sun will always rise in the east as it has ever been rising.)

This is a specimen of Rajasthani language which is full of heroism. By learning this language we spread the spirit of patriotism throughout the country. I would, therefore, submit, Sir, that this glorious language must find a place in the constitution.

Lastly I would say a few words about one thing which is causing me great pain. Under the Constitution Sirohi, has been divided and a part of its territory, Abu has been merged with Bombay. The Government of India has the power to do so and we cannot question its competence to merge Abu in Gujrat, particularly we Congressmen cannot raise any question with regard to this action for we are under Congress discipline and have to bow to the decision of the Congress. But I would like to utter a note of warning in this connection today. Abu has been merged in Gujarat and tomorrow the same, thing will happen with Banswara, Dungarpur, Udaipur and other places. The slogan of "Greater Gujrat", that has been raised by the people of Gujratis sure to spread its poison throughout the country. This tendency is very wrong and will weaken the State. If you want to do justice in this case, you should appoint a commission consisting of members from the Punjab, Bengal and Maharashtra to give a decision on the question whether Abu belongs to Rajasthan or Gujarat. On the basis of decision of the Commission the Government of India may do any thing it likes and we will have no objection to that. We are prepared to accept any decision on the question of Abu if it is taken on the basis of justice. There is some whispering here that Rajasthan and Gujarat should be united into one unit. The argument that is advanced in support of the proposition is that of fifteen million people above cannot successfully function as a State. We shall welcome this proposition provided it is, worked but on an all India basis. Politically and economically small contiguous units may be united into bigger units. Instead of having units of fifteen million population we may form units with a population of thirty or forty millions. But whatever decision is taken with regard to this question, that must be on the lines comprise. It should not be an unjust and arbitrary decision. With these words I appeal to you Sir, that justice should be done to Rajasthan.]

Shri Brajeshwar Prasad (Bihar: General) Mr. President, Sir, I rise to offer my limited and qualified support to this Constitution. But for the adoption of Hindi language and the abolition of untouchability, I would not have seen my way to support this Constitution. I support this Constitution to the extent it is unitary. I am opposed to Federalism, Provincial Autonomy, Parliamentarianism, Adult Franchise and Fundamental Rights.

There is no element of idealism in this Constitution. It is a Constitution foreign to the culture and genius of this land. It is a lawyers' Constitution. It is a Constitution meant to stabilise the interests—both economic and political—of the bourgeoisie and the capitalist classes. Article 24 has banged the door to all progress. Without the liquidation of private property as the means of production, there is no bright future for India.

An Honourable Member : May I request the honourable Member to read his speech slowly, so that we may follow him ? He is going like the Toofan Express.

Shri Brajeshwar Prasad : I am speaking quite distinctly. I would go slow if the honourable President would give me time. But he would not.

The provision relating to compensation incorporated in article 24 stands as a stumbling bloc in the way of progress. The present Government of India Act with suitable modifications would have amply served the needs of the hour. We are passing through a transitional period. Revolution is knocking at our doors. We are not in a position to sense the needs of the coming century. There is decadence all round.

There was no necessity for drafting a Constitution at the present moment. We do not know which way India will choose to go in the near future. There are three courses left open to her. She may follow the road that lead to Moscow or she may fall in fine with England and America. There is a third alternative

[Shri Brajeshwar Prasad]

which to my mind appears to be the best course for her to follow. If there is any inner vitality left in her blood and veins, India will remain loyal to her genius and culture and maintain her separate individuality as the leader of a third Bloc in world politics.

This Constitution stands as a stumbling block in the way of Indo-Russian entente. By incorporating article 24 we have given a fresh lease of life to the capitalists. There cannot be any sincere and loyal co-operation between a capitalist State and Soviet Russia.

If India is to remain loyal to her ancient traditions she must discard the basic foundations of this Constitution. *Dharma* was the basis of all Governments in ancient India. If the will of ignorant and hungry people were ever to become the basis of government in India, it will mean the complete liquidation of all that is good and noble in Indian life. The common man has got no will of his own. He is a bundle of instincts and a creature of environment and heredity. His will can never be the basis of modern Governments in any part of the world and especially in India where he suffers from innumerable handicaps. The concept of *Dharma* incorporates all that is good and noble in Parliamentarianism and rejects the evils that have crept into it. A State based on *Dharma* will never tolerate economic inequality or social injustice. But it will never accord recognition to popular will as the basis of Government. For the will of man is nasty, brutish and short. *Dharma* is in consonance with the fundamental principles of Democracy. The will to will the general will is the core of Democracy. The essence of Democracy is the representation of the real will of the people as opposed to and distinct from the actual will. The actual will is surcharged with passion and prejudice. The actual will changes from moment to moment, from hour to hour and from day to day. It contains within itself all that is mean, stupid and foolish in human life. It can never be the basis of Government. The real will on the other hand is in consonance with the teachings of the great leaders of thought in human history. It is in consonance with morality.

I am opposed to Parliamentarianism because it has no future in the modern age. The average individual is not in a position to understand the highly complicated problems of our industrial society. It is an age of Experts.

This Constitution will amply suit India if it is to fall in line with Anglo-American powers. I hold the opinion that if India decides to fall in line with England and America, she will be committing a first class mistake.

The hungry and starving millions of this country will never tolerate a government which chose to fall in line with the Anglo-American powers. If I were to choose between Washington and Moscow I would choose Moscow and not Washington and New York. I love equality more than liberty.

The essence of the theory of decentralization is utter distrust of the State. Bakunin and Prince Kropotkin advocated the theory that the state is an evil. It was based on violence and therefore inimical to all that is good and noble in human life. The best state is that which is least governed. May I ask the Members of this House are they going to build up their State on the basis of these assumptions ?

The emphasis in the doctrine of Philosophical Anarchism is upon the individual and not the State. The individual should be the sole reservoir of all powers. When we talk of decentralization of powers, our sole aim is to wrench power from the hand, of the Centre and to vest it in the hands of the Provincial Governments. I hold the opinion that if further encroachments

are made upon the power of the Centre, it will reduce the Government of India to the status of the League of Nations. If the social purposes of the age are to be fulfilled, more powers ought to be vested in the Centre. The theory of decentralization runs counter to the concept of a unitary state. A unitary state is the need of the hour. If the menace of Provincialism and Communalism are to be combated we cannot afford to think in terms of political decentralization.

The great Mahatma was an advocate of decentralization. His doctrine of decentralization had an integral relation with the concept of Ram Raja.

(At this stage, Mr. President rang the bell).

It is only in a non-violent society where all the elements of violence have been liquidated that we can achieve the goal of decentralization. As long as there are warring Nation states we cannot think in terms of decentralization. As long as there is economic inequality, the goal of decentralization will elude our grasp. It is only with the need of the togetherness that we can usher in a decentralized society. As long as there is militarism it is not possible to decentralise powers to any extent whatsoever.

(At this stage, Mr. President again rang the bell).

May I take one or two minutes more, Sir

Mr. President : No. You had better hand over your speech.

Shri Brajeshwar Prasad : It should be taken as read, Sir.

Mr. President : No. You hand it over.

Mr. Mohammad Tahir (Bihar: Muslim) : *[Mr. President, before I begin. I congratulate you from the core of my heart that the Constitution of free India has been completed under your Presidentship. It was predestined to be so because it was an urge an inner voice which sprang from the soil of Bihar and it is Bihar which has completed it.

Now I would like to express my views regarding this Constitution. I shall try to put before you its both sides—good and bad—in a few words as I have understood them from this Constitution. I shall put forth the good side so that people might take, lesson from it, and I shall expose the bad side so that in future if the Congress or some other party which comes in power, considers these evils as evils, then it might be possible for them to remedy these ills.

Its good side is the administrative factor. Our Constitution presents to the world the best type of administration. I hope if the authorities of our country act up to it sincerely then it is certain that our country would make rapid progress in a short time and the world would be proud of our country.

In so far as the question of its bad side is concerned I am sorry to feel that it might offend my friends and so I apologise for that and I hope they would give me a patient hearing. Its evil is inherent in its policy. Our Constitution presents to the world the proof of a worst type of policy. Our Constitution ought to have been a mirror, so that if any one in the world would have looked into it he would have seen the true and clear condition of the country. But he can see only this much that this country is inhabited by Christians, Anglo-Indians, Tribals, Hindus, Scheduled Castes Hindus, etc., etc., If anybody asks : “Do Sikhs inhabit this country?”, the reply would be in the negative. If he asks: “Do Muslims inhabit?” the reply would be in the negative. It is due to the narrow minded policy of the Constitution. The general political and cultural rights of the Muslims, who are a permanent minority, have been trodden down. It seems as if in this Constitution the Muslims as a community have no place in politics.

*[] Translation of Hindustani speech.

[Mr. Mohammad Tahir]

Those who asserted that the majority community of India would destroy the politics, culture and the language, of the Muslims, will get the solid proof of their allegations, in this Constitution. Now the Muslims have neither their culture, nor their politics, nor their language, although for other minorities every thing has been provided in the Constitution. In the same way the political rights of the Sikhs have been put to an end. It is now for the world to decide if this was the duty of free India which she has performed through her Constitution. However, I have no complaint against the present form of the Constitution. I have simply pointed out the defects. If in the Constitution any injustice has been done to the Muslims or they have been punished, then it, would make the position of the Muslims all the more advantageous, because due to this shortcoming the responsibility of the people and Government of India would become greater towards the Muslims. If this responsibility would be realized with sincerity then the Muslims would not be the losers. Sir, in this connection I would like to point out that after the 26th of January the Muslims of India will start a movement, which will be a very mild one and their deputation will wait upon the President of India and this will be the last test to know whether in India Muslims could really get some privileges or not.

Lastly I would like to submit that it is a matter of shame that our Constitution could not fix a name for our country. This is A proof of the intelligence, of Dr. Ambedkar. that he suggested a hotch-potch sort of name and got it accepted. Well, if somebody would have asked Doctor Saheb about his home land he could have replied with pride that he belonged to Bharat or India or Hindustan. But now the Honourable Dr. will have to reply in these words : "I belong to India that is Bharat". Now, Sir, it is for you to see what a beautiful reply it is.

Lastly, I would like to request you and the honourable Members to excuse me if my observations have, in any way, offended them.]

Shrimati Purnima Banerji (United Provinces: General) : Sir, at the cost of a little repetition, I would at the outset like to associate myself with my colleagues in their expression of thanks to the Members of the Drafting Committee, to you and to all others who played such an important and necessary role in the various stages of this Constitution. Without being open to the charge of making any invidious distinction, I would like to add a special word of thanks to you on behalf of the back-benchers of this House. For, at various stages of the Constitution, when we were rightly or wrongly exercised by certain doubts in regard to certain clauses of the Constitution, you used your good influence on our behalf with the Drafting Committee to clear these doubts.

Sir, the Constitution of a country always is a very important and precious document, because it gives us an idea of how the great people of a country fashion their institutions, how they want to live, what are the political arrangements under which they exercise their judgment and what are the hopes and aspirations which they entertain for the future. Sir, when we are considering the present Constitution, our minds involuntarily go back to the olden times and contemplates the stages through which India has passed and recalls those periods, the recent periods in the history of our political subjection, when we were told that we were hardly a nation, that we were divided among ourselves in mutually hostile groups, that democratic institutions were congenitally not suited to Indian conditions, etc. We were told in patronising and high sounding phrases that the goal of this country will be the increasing association of Indians in the governance of the country with a view to the gradual realisation of responsible self-government. There was a time when in any, concessions in the form of liberty which were granted to us, words such as 'Our subjects of whatever race, creed or colour will be impartially admitted to office and service', or 'No native of India will in future be debarred from employment

by reason of birth, descent or colour', or 'We shall respect the right and the dignity and honour of the native princes as our own' were used. These phrases, in short, summed up the conception that was before those who were in charge of our destiny, meant for the future of the country. From such a conception of things we know with what gesture of impatience of country turned away and took, in historical words, the Independence Pledge which other countries have also taken whenever freedom was denied to them. We pledged that: "We believe that it is the inalienable right of the people of India to get liberty and freedom." With these words we entered upon a new career and worked for the independence of this country. And today we find that in this Constitution are embodied those historical words which were again raised in some other corner of the world and have since then been making a circle round the world and will continue to circulate till it becomes a reality. These words are the call of Equality, liberty and Fraternity which today find a place in our Constitution.

Judging from those days to this day it seems, that although we may not have arrived at a stage of our fulfilment and completion, we have progressed and surely at least the immediate requirements of a normal society have been today provided. We can no longer be told that we are, a race apart and that we are unable to govern ourselves.

I feel, Sir, that in the debate, that has been taking place in this House during the last few days it is amply proven that this Constitution has received a very mixed reception. Perhaps the Constitution fully deserves a varied interpretation. The main foundation of the Constitution however rests on our common nationality and no Democracy. In our Constitution we say that no matter in which part of the country we may reside we are integral parts of a common Motherland, that we shall, wherever we may be, unite in working for the greatness of this country, that there shall be no distinction of caste, creed or colour or province and that no separatist tendencies will divide us and that whoever is an adult and fulfils the minimum qualifications laid down for candidature can aspire to the highest office in this land. Therefore at least one milestone we have reached and we have reached the stage when we no longer feel that the tallest amongst us must bow before any foreign ruler.

But, Sir, I still think that great as the change is, all these things provide only the minimum requirements of a society. We ourselves during our freedom movement said that it was not for the loaves and fishes of office that we were fighting but rather that we might have the political power in our hands with which we could fashion and remould and change the whole structure of society in such a manner that the grinding poverty of the masses may be removed, the living conditions of the people may improve and we could establish a society of equals in this great country of ours. To apply that test to this Constitution, Sir, I feel that it does provide those minimum necessities with which we can change things, and for this I take my clue from the Directive Principles of State Policy. We could not merely rest content with negative democracy, *i.e.*, the right to cast votes, the right to form a government and the right to change it. In passing I would pause and say that important as these rights are in themselves, I consider that the Fundamental Rights that we have provided are absolutely necessary for the working of democracy. If we want to establish a democracy which should answer the needs of the growing pattern of society, we should place the means at the disposal of the people by which Governments can be established, which in its turn can be done by the right of free association and free expression of opinion, with the exercise of which institutions can be changed. I feel, Sir, that, the clauses restricting these Fundamental Rights should not have been in the Constitution and the impression should have been well founded so that one may change the Government of this country to the best interests of the people by, peaceful means.

[Shrimati Purnima Banerji]

Sir, in the Directive Principles of State Policy we have said that although they may not be enforceable in a court of law, they are nevertheless fundamental for the governance of this country and we have in articles 38 and 39 stated that the economic policy of the country will be worked in such a manner as would subserve the common good. To quote the exact words, we have said 'that the ownership and control of the material resources of the community are so distributed as best to subserve the common good; that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.' These vital principles shall not be enforceable in a court of law but nevertheless they are fundamental in the governance of the country and all the future laws of this country shall have to take not of this. By the inclusion of these clauses I personally feel that this Constitution has provided us with the means for changing the structure of society, It will all depend on us whether we are able to establish that sovereign democratic republic, not for the hollow benefit of registering the *status quo* or which will take upon itself the policy of *laissez faire*, but a democracy which will combine with it the healthy principle that that government governs best which governs least, with the principle that it should encourage the active citizenship of the country. The two articles that I have read out are the cornerstone of this Constitution. If you want the people to meet peacefully and without resorting to violence, then we much give them the free exercise of their right to meet.

At least in one aspect of this Constitution, I most categorically hold that the Fundamental Rights of meeting and forming associations should under no circumstances have been circumscribed or limited by any provisos. I would rather take my inspiration from the American Constitution in this respect where they prescribe the Fundamental Rights boldly, and merely state that they will be subject to laws made by Parliament. I do not hold the fantastic theory that all rights, I should think, Sir, that they should not be burdened by giving the circumstances in which those rights cannot be exercised. If these circumscribing clauses had not been stated in this Constitution the difference would have been psychologically great—the difference would be that the laws which circumscribe the right of free speech and impose other restrictions would have been repealed when the necessity for them was no long there; they would not have been statutorily fixed by the Constitution. The complaint already is that this is a written Constitution and a bulky Constitution, and the more a Constitution is written, the more rigid it becomes. Considering this, Sir, I feel more so that in the Fundamental Rights these restrictive provisos to freedom should not have been there.

Sir, article 21 guarantees personal liberty and article 22 provides for preventive detention. In article 21 I would have like to include the safety of the person, his dwelling and his personal property from being searched or confiscated, because the powers of search and detention by Governments have played a disastrous part in our own political history, and we would not like these powers to hamper the growth of healthy political movements in future.

Then, Sir, in the Directive Principles of State Policy, under article 39, we have provided that while we may change the whole structure of society in such a way as will observe the general good of the country, there is no categorical statement that any industry might be taken over by the State should that be necessary for the general good. In the Karachi Resolution of the Congress where most of these Fundamental Rights were incorporated for the first time in a political document, there was a provision that key industries and all the mineral resources of the country shall be State-controlled. That, I think, should have found a specific place in the Directive Principles of State Policy.

If the powers of government for protecting the State against foreign aggression are considered necessary, then I hold that key industries and mineral resources of the country should have been taken over from the hands of private enterprise, and these should also be exempt from justiciability or property compensation which we have dealt with elsewhere.

Another thing which I would like to mention and I think I will be voicing the views of most of my colleagues in this, is on the subject of salt. Salt has a big history in this country like the Boston-tea of the Americans. Even though, I understand that the intention of the Government is not to levy any duty on salt, I feel that it should have been a gift of free India to the people of this country and the Constitution should have specifically provided that salt manufactured in India would be free of duty. That also finds a place in our Karachi Resolution on Fundamental Rights.

In the Preamble, Sir, I find the absence of the word which was dear to us and therefore should have found a place there, and that word is "Purna Swaraj". I would have wished that the Drafting Committee had said that "We, the people of India, having attained Purna Swaraj, now constitute ourselves into a democratic republic". That, I think, would have been a happy thing.

There is another point regarding the services. Many friends have dealt with that subject. I personally think that even from the point of maintaining a healthy spirit of permanency in services, I do not think they should have been statutorily safeguarded thereby bringing in another difference between themselves and the people. The services are usually guided in respect of the manner in which a man should be engaged and the manner in which a man should be dismissed by Service Manuals providing these rules and if that is good enough for the rest of the services of the country, it should be good enough for the higher services of this land.

With your permission I would add another point. We have in this Constitution some references to women. I would beg my colleagues in this House particularly Rohini Babu not to deal with the subject with any levity or any lightness of spirit because we have to realize that women also as the rest of India are standing upon a new threshold of life. As between the purdah-system and the new life which awaits the development of her personality, she is finding a new place in her home and her country and it is difficult enough. The part she has played in the building up of her home where she has been described as *Sahadharmini* has to be extended and she has to receive that recognition in the national sphere also. She is also man's equal partner and help-mate and in the nation building activities of the country she has much to do. That position still is to come into being, and therefore I would request my honourable friend Mr. Rohini Kumar Chaudhuri and others who are present here to look upon this problem with the gravest possible thoughts and to give it their best help and assistance. I hope that as in the freedom of the country the women of India did not fail this land so in the preservation of this freedom she shall not fail.

Sir, with these words I would conclude with the words employed on the 14th of August by Pandit Jawaharlal Nehru when moving here a resolution, he said that it may not be given to all of us to fulfil the ambition of the greatest man of our age which was to wipe every tear from every eye but till the poverty of the masses has not been relieved and suffering remains, we pledge ourselves to the service of this country. I hope that in the short span which is allotted to us, you and I as colleagues and comrades will work hand in hand for the greatness of our country.

Shri V. S. Sarwate (Madhya Bharat) : Mr. President, it may be admitted on all hands that one of the greatest achievements of this Constitution which we are enacting is that it equally applies to all the Indian States within the borders of India. This is a great and glorious consummation, unique in the history of India, and the country owes a debt of gratitude to Sardar Patel for it. But let

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us not forget at the same time those who have contributed as efficiently to this consummation, I mean, the peoples of those, States. This House knows full well the sacrifices and services of Sheikh Abdulla, but there were Sheikh Abdullah's in several Indian States of whom probably many in this House do not know. They were there in Travancore, in Mysore, in Baroda, in Kolhapur, in Saurashtra, in Central India, even in Rajasthan, in the Sigh States in the North and the Orissa States in the East. These people had organised strong Praja Mandals in their States and their demand for responsible Government could hardly be suppressed by the rulers concerned even with the help of the British power. When that power was gone the rulers were left without any outside support. It may be magnanimous to say that the rulers readily agreed in a spirit of self-sacrifice when the covenants of either merger or accession were presented to them by the Government of India. But that is not a historical truth. It was because of the efforts of these people in the States that the rulers full well knew that they had no alternative; that if they did not agree to the Covenant of Accession they would have had to meet with a worse fate from their people, and it is this emergency, this necessity of circumstances, which made them yield. I trust, therefore, that this House would not grudge recording its appreciation of the sacrifice and service, of the sufferings and trials of the great fight which these people put up and continued in their several States for the consolidation of India.

Coming to the Constitution itself I may say that every man residing in Indian State would have been happy if the Rajpramukh had not been linked with the Governor and the President. I am reminded of a jibe at Panini, the Sanskrit Grammarian and in one of the aphorisms he had said:

श्वा युवाम द्योनः

He applied the same rule to a dog, to a young man and to God Indra. Something like this has happened in this Constitution. I would refer to article 361. The section says : "No criminal proceedings whatsoever shall be instituted or continued against the President or the Governor or Rajpramukh of a State in any court during his term of office". It was quite all right as far as the President or the Governor was concerned; but the clause does not fit in with the Rajpramukh, whose office terminates only with his life. Take a worse case. Supposing a Rajpramukh commits a murder. There is absolutely no remedy against this in this Constitution.

Shri T. T. Krishnamachari (Madras: General) : May I point to my honourable Friend that the Rajpramukh will hold his office only subject to the President allowing him to do so and if he commits a murder, he will be removed from the office?

Shri V. S. Sarwate : I would again say that the Rajpramukh does not hold office during the pleasure of the President. He holds it by virtue of the covenants which have been agreed to and which could not be set aside.

Shri T. T. Krishnamachari : I am afraid my honourable Friend is completely misinformed.

Shri V. S. Sarwate : All right. I shall be happy to be wrong. All the same.....

Pandit Thakur Das Bhargava (East Punjab : General) : The Constitution is the sole authority now and overrides all Covenants, etc.

Shri V. S. Sarwate : I may be allowed to have my own views and I think that no process for the arrest or imprisonment of the President or the Governor or Rajpramukh of the State, shall issue from any court during his term of Office.

Now I shall refer to article 238 which lays down that certain provisions of Part VI would not apply to Indian States. This section, for instance says that articles 155, 156 and 157 shall be omitted from Part VI, *i.e.*, they will not apply to Indian States. Article 155 lays down : "The Governor of a State shall be appointed by the President by warrant under his hand and seal." Article 156 says: "The Governor shall hold office during the pleasure of the President." But, it has been specifically said in article 238 that article 156 shall not apply to the Indian States. That supports me in saying that the Rajpramukh does not hold office during the pleasure of the President. Further, it is curious that article 157 also does not apply. Article 157 says : "No person shall be eligible for appointment as Governor unless he is a citizen of India and has completed the age of thirty-five years." This article does not apply to the Rajpramukh. A Rajpramukh even if he is 21 years of age, will be able, according to this Constitution, to carry on his duties as Rajpramukh. It is anomalous that in the case of Provinces which are said to be better administered and which are said to have a better form of Government, the Governor should have completed the age of thirty-five years whereas in the case of Indian States which are said to be less efficiently administered, the Rajpramukh who has to discharge the same duties should be allowed to be of a younger age than thirty-five. I do not know why article 157 should not have been made applicable as far as the age, is concerned to the Rajpramukhs. I know there are difficulties in the way of the Covenants. The Covenants lay down that the Rajpramukhs will be governed by the rules of succession in their State and further they would be Rajpramukhs for their life. I would have been happy, and probably everybody would have been happy if the constitutional pandits could have devised some means by which the Governors and the Rajpramukhs would have been separated in the case of Indian States. The Rajpramukhs could have been some titular office and the office of the Governor should have been newly created. It may be too late to say this at this stage; but this is a defect in the Constitution which would have to be taken into account later on when the time comes for amendment.

I wish to refer to one or two points which seem to me to require some comments. I find there is an article for the appointment of a Financial Commission, namely article 280. In this article, it is laid down, I am referring to clause (c) "the continuance or modification of the terms of any agreement entered into by the Government of any State specified in Part B of the First Schedule, (that is, the Indian States) under clause I of article 278 or under article 306." The words 'under clause (i) to article 306' are new and they have been inserted after the Second Reading. I am sorry and I regret very much that, being ill, I could not send in my amendment to this. This ought to be considered by the House or by the Drafting Committee or by whosoever be in charge, whether it would not have been better and in the interests of an concerned that the whole financial integration between the Indian States and the Government of India had been entrusted to the Finance Commission. There would have been an independent tribunal as it were which would have judged and decided taking into account all conditions. The present condition is this. The Government of India which is a party to the financial integration is to give the final ruling. That Government being the dominant partner, and the Indian State being the subservient partner, the balance of benefit is always likely to be on the side of the dominant partner. Therefore I say that it would have been much better if the financial integration had been left to the Finance Commission. The clause I referred to above is a new addition, which has been inserted after the Second Reading. This clause restricts reference to

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the Finance Commission to certain agreements only. I am afraid the attention of the House has not been drawn to this particular new clause. I would very humbly request the President and the authorities concerned to reconsider this portion and see whether it could not be so modified that the whole question of financial integration between the Government of India and the Indian States is entrusted to the Finance Commission. This is a very important point; much more so, because, as one of the previous speakers said, some of the States are losing a very big portion of the income which they derive, *e.g.*, from customs and railways. In such a state of things, it behoves the Government of India to take into account the loss which they are suffering and to take upon itself the burden of the privy purse at least. By the abolition of the States, the Government of India on the whole derives much more benefit than the particular State concerned. I am sure that after a few years, every Indian State would in any case have had responsible Government. The popular movement was so strong that in a few years time, they could not have remained rulers and probably the position as far as the rulers were concerned would have been much worse.

I shall finish in a minute or two. I have only to mention one or two points. I may be allowed to state that in certain cases the privy purses now settled by the covenants are more than what the rulers used to get before. I know a particular case whether the Ruler was getting less whereas he is getting more under the covenant as privy purse. This was done because the interests of India as a whole required it to bring about this consolidation. Therefore, it behoves the Government of India, it is moral duty of the Government of India to take upon itself this burden of the privy purse. At present what is done is that the Government of India pays in the first instance and then takes the same money from the State concerned. That should not be the case. The Government of India should pay from its own Consolidated Funds.

I want only to refer to one more article, article 295. This, I am afraid, is also a new section; probably some words are added after the Second Reading. This article lays down that the ownership of all property in the States which relates to the Union subjects shall vest in the first instance in the Government of India, and then, may be made subject to any agreement which may be made in that respect. I should have thought it should have been the reverse. All property should have in the first instance belonged to the State concerned. and subject to any agreement, it should have gone to the Government of India. In any case, this question of the ownership of the property in the Indian States relating to the Union subjects should be decided by the Finance Commission. It should be a subject of investigation by the Finance Commission. At present, agreements are reached, I am afraid, not so much on the financial principles as on the particular circumstances of each State concerned.

Lastly, I should say a word about article 371, relating to the general control over the States. There are States and States. I admit, and one would have to recognise the fact, that there are States which may require outside control. But there are States also which are in no degree less efficient than the British Provinces. So it is a slur on them which cannot but be felt very seriously by anybody who has any self-respect that all Indian States as a rule should be placed as if under a Court of Wards. There is, no doubt, a provision here which is some solace. As long as there is this control by the States Ministry all ministers in the States for solving their internal dissensions, instead of looking to their Legislature would run to Delhi for advice from the States Ministry. Instead of pleasing their constituencies, they would rather please Delhi. This is inevitable under the circumstances and therefore it is neither beneficial to states concerned nor to India as a whole in the long run. I would

therefore appeal to the future President that he gives full latitude to the proviso to this article, namely, "that the President may by order direct that the provisions of this Article shall not apply to any State specified in the order." To tell a man to be self-dependent, the best way is to take away his support : he may totter for some time but then he will regain his balance. So I appeal to the President that with the power given to him under this proviso, he excludes from the operation of this clause all those States whose administration justifies such exclusion. With these words I support the Constitution.

Shri Basanta Kumar Das (West Bengal: General): Mr. President, Sir, there are mainly three factors which have given our Constitution the present shape. I like to call them the three legs of this Constitution, *viz.*

- (1) The experience gained through the working of Government of India Act of 1935.
- (2) The needs and aspirations of the people who have become free, and
- (3) The impact of events occurring in the country and abroad and of those that may be expected during at least the coming 10 years.

Sir, the Government of India Act, 1935, is an almost perfect mechanism for the smooth running of a Police State and is worded in a very suitable legalistic language standing the test of time. The Constitution has therefore, done well to draw largely from that document so far as its administrative side is concerned.

But with freedom achieved, the State has to pass from a 'Police State' to a 'Welfare State' and along with the peace and security of the country the full growth of the people is to be assured. A copy of that Act cannot therefore be possible, nor would it be proper to do so. To effect a balance between those two very potent factors was therefore a necessity but that work has been much hampered by the third factor *viz.*, the political situation particularly arising out of the division of the country, the fissiparous tendencies that always attend a newly-achieved freedom and the cultural and ideological crisis through which this country as well as the other countries of the world are passing. In this very difficult task of making a compromise between these factors, the wisdom, knowledge and experience of our leaders have been put to a severe test. On the one side of the picture, we have been given a central authority with almost dictatorial powers to ensure security, law and order and to deal with all disruptive forces with a very strong hand. On the other side we have the provisions of Fundamental Rights and the Directive Principles which if observed and worked out in a right spirit, will go a great way to fulfil the aspirations of the people who have been impatiently looking forward for happy and prosperous days after the shackles of foreign yoke have been cut as under.

But if the principles embodied in the Constitution fail to bring about the anticipated results, that failure must be attributed to the lack of skill to handle the machine and not to the machine itself. A weak, inefficient, tactless administration is incapable of delivering the goods even with the best form of Constitution on earth. This Constitution has at its background an administration guided by the great leaders of the country and to my mind, it is an experiment for at least 10 years.

I must, however, say that the Directive Principles which aim at the paramount task of nation-building and which are a sort of instrument of instruction from the nation's representatives to the administrators of the country might have been put in, a more obligatory form. In its entirety the nation-building scheme envisaged in this Constitution is not as definite and comprehensive as it might well have been. To take for instance, I may mention the provisions regarding education—which place no compulsion on the administration to attain

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a certain level and standard within a definite period of time—although “educate” and ‘educate’ should be the motto of the State in order that democracy may be a success in this country. The same may also be said about the economic pattern of the society as set forth in the Constitution.

But if the, task of effecting a balance, I have referred to before, has not been properly performed and our leaders have been led more by the exigencies of the situation than by hopeful liberalism, the ultimate appeal will lie with the ballot-box which is the greatest boon that the Constitution has conferred on the people.

I do not deny that the ballot box has many vices and it has been criticised by some as unsuited to the Indian soil. But the pattern of the Constitution we have set forth before us leaves us no escape from the ballot box. It is upto us to rid it of its vices and to learn and teach to use it as a sacred trust. Only if the ballot box remains incorruptible, we have nothing to be afraid of any arbitrary power that may have been conferred on the executive who shall have to serve the masters who hold the box. Criticism has been offered that the proposed system of ballot-box might well have been replaced by basing the Government on the village Panchayat as its unit with a view to ensure a truer and more real form of democracy. I must confess that we have not been able to bring about that revolutionary change for a decentralised government. In spite of the teachings of the great apostle. of non-violence and truth, we have not been able to spiritualise our life and thought and politics in a way adequate to conform to a system of decentralised government. But the revolution has yet to come and come when it will, we must have to change this Constitution. But today let us welcome this great achievement and work it in a spirit of faith and hope extending all co-operation to our leaders whose handiwork it is and who may be considered fit to wield it to make the nation strong, prosperous and secure.

Sir, I support the motion for acceptance of the Constitution.

Shrimati G. Durgabai (Madras : General) Mr. President, Sir, the speakers ‘who have preceded me have placed before you in a highly learned way an exhaustive analysis of the Constitutional set-up which this country is going to have. Sir, I have no intention to repeat them, firstly because I do not claim to have that legal or constitutional wisdom to say anything by way of throwing further light on the points already placed before this House. I also think that at this stage it is better to look forward than look backward and dissect this Constitution in a theoretical way to find out either the merits or the defects of it. Sir, there is only one standard by which we have got to judge this Constitution. The purpose of a democratic constitution is to find a device and to establish a machinery to find out the general will of the people and also to give scope for the general will to prevail. Does this Constitution fulfil this object? That is the point to be considered. Sir, with the franchise extended to all the adults, and with the ample checks provided to control the executive and the Fundamental Rights solemnly guaranteed by this Constitution, I do not think any fair minded person would say that this Constitution does not fulfil that democratic purpose, that it does not establish the scope and opportunity for the will of the people to dominate in the administration of their affairs. May I say, Sir, that it is not or should not be the purpose of the makers of the Constitution to give the colour of a particular political ideology to the Constitution, and it is well that it is left to the people and the people should be left alone, and they should be the masters to shape the destiny of this country and also to mould their machinery as they like, as long as they hold the field. It would have been wrong on the part of the makers of the Constitution to have given that kind of colour or to put a kind of interpretation of a particular brand of political

Philosophy to the provisions that are embodied in this Constitution. What the Constitution should do is to give the people sufficient and free scope to canvass their own particular brand of ideology and give them the means to make their own opinions prevail as long as they have got a voice in the administration of the country.

Sir, it is possible for a socialist to complain that the principles of his own party do not find a place in this Constitution. But ours is a Constitution which is neither a socialist Constitution, or a communist Constitution, or even for the matter of that, a Panchayat Raj Constitution. It is a people's Constitution and a Constitution which gives free and ample scope to the people of India to make experiments in socialism or any other ism in which they believe would make this country prosperous and happy. It would have been wrong on the part of the makers of the Constitution to have introduced their own political philosophy, and they have done well in making this Constitution, as I say, a cent per cent. people's Constitution, and leaving it at that.

In their own wild disappointment, some unkind critics have described this Constitution as no better than "the Motor Vehicles Taxation Act". That, Sir, is very cheap criticism, I should say. Does this Constitution which for the first time gives adult franchise, for the first time guarantees the Fundamental Rights, and which has amazingly succeeded in blotting out the hundreds of patches of this country and made it a strong and united country, does this Constitution stand on a par with the Motor Vehicles Taxation Act? Certainly, as I have said that is a way of criticising this Constitution which is a very cheap way.

Sir, I will not deal with the various constitutional safeguards provided in Constitution for a democratic government. It is a subject on which many learned disquisitions have been made. As I said, we should now look forward and see to shape the future, of things, by means of this, Constitution. Many have dealt with the *pros and cons* of adult franchise. It is a very good thing provided it is exercised in the interest of this country. What should we do to bring about this happy consummation? It is said that adult franchise unleashes vast forces which may not work in the interest of national good, but which may work in sectional interests. Sir, it depends upon the leaders who are going to take charge of the destinies of our country and of the new set-up to create sufficient safeguards against such an abuse. I do not imagine the problem is so difficult as we think it to be, if we only make, in the first instance, membership of this House the membership of Parliament, not a position of unusual prestige or of position and power, but a post of duty and of heavy responsibility, a post of duty and very hard and efficient work. It is only then that many of the defects of parliamentary democracy will be automatically solved. Can we not devise a method by which the elected representatives would be looked upon, not as belonging to a privileged class, but as persons discharging a heavy responsibility and duties over and above, and in addition to talking which is what we are doing now. As long as we maintain the *status quo* with regard to the position of the representatives of the people there will be that scramble for seats in Parliament and the consequent scramble for power. Only when we are convinced and make others also realise that the position of an elected representative is not merely a position of luck or prestige, but a place of duty and hard and efficient work, only then will there be the necessary restraint in the matter of the choice of the representatives.

Sir, I will not take up much of the time of the House but will only mention one feature which appears to me to distinguish the Constitution from the American type of constitution, and that is with regard to the judiciary. Although this Constitution is of the federal type, there is not a double chain of courts created in this country, that is, one, set to administer the federal laws and another set to administer the laws made by the State. All the courts form a

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single hierarchy, at the head of which is the Supreme Court. Immediately below the Supreme Court there are the various State High Court and below them the subordinate Courts of the States. But every court of the chain, subject to the usual pecuniary and other local limits, will administer the laws of the country, whether made by Parliament or the Legislature of the State.

Sir, there are several other kinds of criticisms made against this Constitution, but I have not got time because I have to accommodate other colleagues of mine, as the President has already said.

Sir, I would just mention one or two points. It is said that there is nothing Gandhian in this Constitution. Look at the Chapter on Fundamental Rights. It has always been criticised in the House and some of the attacks have been bitter, that the Fundamental Rights are not worth the paper on which they are written. Is it supposed that because the Fundamental Rights are hedged in by certain restrictions, they are absolute trash? These restrictions on the Fundamental Rights are completely in consonance and in accord with well recognised restrictions in the whole jurisprudence not only of this country but of the whole world and the constitutions of various countries. The rights should not be absolute.

I have also heard the criticism that this Constitution has not laid down the duties of the citizen. It has laid down only the rights. I do not want to say much on the restrictions which have been placed on the Fundamental Rights. While claiming his rights under the Constitution the citizen should as well remember that he has got an obligation and a duty to the State, from which he expects his right or his protection.

Look at the Chapter on Directive Principles of State Policy. It is said that they are just merely principles which are not enforceable through the courts of law. Constitutional declarations of social and economic policies of the State are becoming a common practice and it is not even unknown to ancient India. Artha Shastra mentions an injunction to the King in these terms;

“The King shall provide the orphan, the dying, the infirm, the afflicted, the helpless with maintenance He shall also provide subsistence to the helpless and the expectant mothers and to the children they give birth to.”

This is a basic injunction of the Artha Shastra, which the King has no option but to obey and it could form the guiding principle of our Government both at the Centre and in the States.

I do not want to deal with the criticism that this Constitution which is a republican Constitution cannot work well within the Commonwealth, which we have chosen to be part of. From many sources we have heard this criticism. I do not want to deal with it at length but would only say a word. I do not think it is an insurmountable difficulty. I would mention again that it is not unknown in ancient India, because the republic, of Licchavis is mentioned as having a form of membership or partnership with the empire of Chandragupta. These two names are inscribed on the imperial coins. Berriedale that in the Commonwealth if there was no room for the republics to work then the enduring character of the Commonwealth itself was of a doubtful nature. Therefore it would be well that we recognised certain authorities for this purpose of working together. Therefore, it need not be thought that this would constitute any difficulty.

Last but not least I want to say that I have just read the decision of the Government of India this morning in the papers that they have created facilities to bring about the Andhra Province at an early date. They have done well

in leaving the details to be worked out by a Partition Council and that the Centre would not interfere with them. I am very glad about it and I hope that the Partition Council which might be created will not do anything that is injurious to the peaceful and quiet life which the people are enjoying hitherto.

Dr. V. Subramaniam (Madras: General): Mr. President, in the Draft Constitution of India which we are going to adopt within a few days, we have only peg-marked the path for the construction of the road through which the ship of State should sail. The ship will be steered by the new Prime Minister of India on which there will be about 500 M.Ps. as sailors. It is the duty of the President of the Republic of India to guide us all to the destination. The destination is contained in the Preamble. With the, Preamble as our goal we are fixing 395 articles as peg-marks. The regular road is to be constructed by the future parliamentarians. By the wisdom and foresight of our leaders and with the help and co-operation of the honourable Members we were able to trace out a plan foreseeing the difficulties ahead and utilising the experience of other nations. Let us pray to the Almighty to give us sufficient strength and wisdom to steer the ship away from all the invisible obstacles.

We are to begin our journey on the 26th January 1950 when we will resolve ourselves to carry out the Constitution in letter and spirit for the good of the people. Equally so the people must also realise their duty to the State and work shoulder to shoulder with the State. The provisions contained in the Fundamental Rights and Directive Principles of State Policy are ample evidences for the guarantee to the people.

Our old structure of society, as enunciated by the seers of our land was based. on the *varna* and *Dharma* or duty that each *varna* must do. Now that all *varnas* have gone out of the work allotted for them, owing to the powerful cause of Time “Kal”; society wants a change in its structure so that people can select their own professions according to their tastes and get equal opportunities in the social, economic and political life. Further, modern society wants to make no distinction between man and man by birth or status. These changes we were not able to bring about for the last many centuries. Now that alien rule has been eliminated, we give this Constitution to ourselves.

Constitutions of countries were generally framed immediately after revolutions or wars. We in India were fortunate to frame our Constitution almost in a normal atmosphere except for some troubles created as a result of the partition of the country. At this juncture, I bow my head in reverence to the Father of the Nation for his unique leadership, through whose ideals we were able to reach this stage. I think our Constitution will work well in due course. It is not wise to criticise it at the start itself.

The one thing that the future State should concentrate on, if they want to build an ideal India, is upon the building up of the individual in the State. If the individual is perfect then the State also becomes perfect. It will take a long time. A government conducted by an individual or group of individuals who are perfect both in thought and deed is Ram Rajya, a rajya dreamt of by Mahatmaji.

In this constitution I find a lacuna. There is no provision for creating a new era just like “Salivahana Sakapatha”. Now it is Salivahana year 1872 and Kali 5051. So my desire is that soon after the birth of this Constitution for all State purposes we must open the Gandhian era as the first year, the date being the date or day when Mahatmaji was assassinated. Either Gandhiji’s date of birth or death must deserve a new era.

The predominant feature of the Gandhian era would be the importance of the individual as against the State. Gandhiji in all his writings and speeches emphasised the need to create conditions for the development of the personality

[Dr. V. Subramaniam]

of the individuals who constituted the State. This he visualised as possible only under conditions of complete decentralisation of power—political as well as economic. I cannot but share the views of some of my colleagues here that this Constitution has not aimed at bringing about such conditions in our country. Political power has been so much centralised as to endanger the prospects of economic decentralisation so necessary for the development of the human personality of our people.

With these observations, I support the motion before us.

Shri K. M. Jedhe (Bombay : General) : Mr. President, Sir, I stand here to congratulate Dr. Ambedkar and his colleagues for having taken great pains in framing India's new Constitution. We have spent nearly three years and now we are completing our great work. Some Members while congratulating Dr. Ambedkar have called him the present Manu. I am certain that he would not like this appellation. I know he hates Manu who has created four castes the lowest of which is the untouchable class. I remember that he has publicly burnt Manu Smrithi in the huge meeting of the untouchables at Mohad in 1929. He is the great leader of the Harijans and is greatly extolled by them as their champion and is worshipped as an idol. They are very proud of him. They call him Bhim and make it known to the public that he has framed Bhim Smrithi. I also call it Bhim Smrithi though I belong to the Sprasya Class. Dr. Ambedkar is a great lawyer and a man of great ability and intellect; nobody will doubt that. Untouchability has been removed by law and while framing the Constitution, Dr. Ambedkar was very keen and earnest in safeguarding the interests of the Harijans. All Harijans must be grateful to him. At the same time, we must also be grateful to our country's Father, Mahatma Gandhi, who gave us independence. He was a great soul who made, great efforts during his life-time to remove untouchability. His great wish was to bring the Harijans to the level of touchables. He is not among us to see his great wish fulfilled and bless us, because he fell a victim to a cruel and villainous plot.

I must also congratulate Sardar Vallabhbhai Patel for having achieved the unification of India. He is strong and resolute, strict and stern, while administering public justice. He has brought low to level ground the Indian princes who were a great impediment to India's swaraj movement at the time of the British Government, but now they are crestfallen. Now India is one, and the whole credit goes to Sardar Patel. Here I must express my great respect and reverence for him.

The Constitution which is nearly complete has made the Centre too strong and much of the powers of the Provinces has been curtailed. The Centre has become the great king and the Provinces its dependencies. We get adult franchise and for this we must congratulate ourselves. Many have shed tears for having extended the franchise to all men and women above the age of 21. Their whole argument, which is selfish, is that the people of this country are ignorant and uneducated, but the whole blame goes to the upper class, because they have kept the people ignorant for their selfish ends. No one will be deprived of his right of franchise if we want democracy, the rule of the people. We are told that democracy is embodied in the new Constitution. The Constitution has vested great powers in the hands of the President and I am under great apprehension that there will be a dictatorial rule instead of democracy and that the Fascist mentality will grow as the Centre is made strong. However, we are to see how our new Constitution works and satisfies the people.

We cherished great hopes that along with the Andhra Province, Samyuktha Maharashtra would come into existence with the beginning of the new Constitution in this we Maharashtrians were greatly disappointed. Andhra

Members got their province separate and for this we must congratulate and praise them for their united efforts. We Maharashtrians were asking for separate Marathi-speaking province—Samyuktha Maharashtra including Bombay—but we did not get it because we were not one. Some C.P. Members were for Maha Vidarbha and Bombay Provincial Congress Committee was for Bombay to be a separate unit. Sir, we do not want Maharashtra to be divided. We are willing to remain in the Bombay Presidency for some years more. We still hope that Samyuktha Maharashtra will be created along with Bombay city. We have patience to wait and we hope that we will get Maharashtra as we demand. In this I will be supported by Shankarrao Deo and Kakasaheb Gadgil.

Sir, I have done.

Shri Satis Chandra Samanta (West Bengal: General) : Mr. President, Sir, before I begin my speech, I want to tender my heartfelt offering of homage to those who sacrificed their lives, liberties and all the pleasures of their lives for the country, as a result of which we have become independent. Soon after independence we started framing the Constitution and we are now at its completion. This Constitution which we are going to present to ourselves is based on democracy. The world is after democracy and we are also following the same path. According to Abraham Lincoln, democracy means the Government of the people, by the people, for the people. We have framed our Constitution according to that principle. We have been selected to come here in a democratic way and we have framed this Constitution according to the best of our knowledge. In spite of personal points of difference, we have accepted the verdict of the majority; if we now go into the merits or demerits of the Constitution, nothing will be gained.

Now, as regards the Constitution, I may refer to the fact that on 29th July, 1934, the Congress demanded the constitution of a Constituent Assembly. The then British rulers did not grant our demand. Now, through our sacrifices and efforts, we have constituted our own Constituent Assembly. This Constitution we are going to give to ourselves is a thing which is for us to adopt and work in a true spirit. We the people of India have framed it and if there be any defect in it, we should accept it and not grumble about it; because the people of India and their representatives who have framed it are what they are, it will go on.

So we have nothing to grumble. My friends have gone into the merits and demerits of the Constitution. I admit there are demerits, but now we cannot escape those demerits. I am one of those who can express joy over the framing of this Constitution, as a Member of this Constituent Assembly, because the fundamental things which we want are there in this Constitution. In spite of the defects that this Constitution contains, we who are the framers of this Constitution should try to execute the articles thereof in the proper spirit for the welfare of the country. If we do not take that trouble and that responsibility, we will not be doing our duty. So, whatever defects the Constitution may have, much will depend upon the way in which it is worked. I would therefore urge upon the framers of this Constitution, the Members of this Assembly to explain its provisions in their constituencies within one year from now, before the next general elections and educate the electorate to be worthy citizens of India so that the right men may be elected by them for properly working this Constitution. Unless the electorate has the education to choose real representatives, however good the Constitution may be, it will bring so good to us. I repeat this request to the present Government also to educate the electorate by introducing compulsory adult education within the next year so that this Constitution may bring about the desired effect.

[Shri Satis Chandra Samanta]

Sir, I want to say a word about adult franchise. As one who is a villager and a common man, I know the defects of the villagers. Unless we give them opportunities to know what they are, they will never rise. There have been good men and there are still good men in the villages. If real responsibility is given to them, every one of them will prove his worth and this Constitution can be worked successfully.

Sir, I moved an amendment seeking to bring the village panchayats under the Fundamental Rights. They have, however been brought under the Directive Principles. If the village panchayats are properly constituted as provided in the Directive Principles, the wishes of Mahatma Gandhi could be fulfilled. There are many articles in this Constitution which fulfil the ideals of the Father of the Nation, Mahatma Gandhi. Those ideals should be fulfilled.

Lastly, I would request one and all not to criticise the Constitution, but to give effect to its provisions with a spirit of service so that the wishes of the Father of the Nation may be fulfilled. With these words I conclude.

Kaka Bhagwant Roy (Patiala and East Punjab States Union): *[Mr. President, a large number of my honourable Friends have expressed different views regarding the very Constitution which they have themselves framed. This has confused me and has also given me pleasure. So far as I am concerned, I foresee the basis of revolution in this Constitution. After years of political struggle and unparalleled sacrifices, India attained independence and the Constituent Assembly of free India was constituted. A wave of enthusiasm overtook India. But the people of the States only looked towards this great Assembly with hopes in their eyes. As the time marched, the map of India's beautiful future became clearer to Indian people. The States subjects got rid of the despotic rule. Small States were dissolved and went into Unions. In a big country like India they were given equal share. The Indian people were given the right to constitute their own government by their own votes. In truth it can be said that for the future the reins of the Government have been entrusted to the Indian people. It appears to me that in the history of this ancient country this is the first revolution of its kind when power has been snatched from the hands of Rajas, Maharajas and their courtiers and has been placed in the hands of the people and when rulers' birth right to rule has been nullified. Now it is the duty of the people to consolidate this change and to infuse life by their good actions in this Constitution which is based on beautiful ideas. I am aware of the responsibilities of the people and their leaders. Our countrymen are innocent and illiterate. Different people and different bodies will play with their sentiments by their own tactics. But its duration will be short. I am fear-stricken. With the enforcement of this Constitution the ignored people of the country will raise their heads with the help of natural force and will acquire the rights of which they were deprived for centuries together, and that great revolution which lies implicit in the Constitution and looks like a dream, will reveal itself in its true colour. That map which our beloved leader (Respected Gandhiji) kept in mind while engaged in the political struggle will be in its prime of youth. And those very stories which we have been hearing and reading of our country's knowledge, civilization, culture, wealth and prosperity will become a reality and will give to the world the message of happiness, love and beauty. In the Constitution, reference has been made regarding the Harijans. Whenever we debated on this subject in this House and whenever its necessity was felt, I hanged my head with shame. I would like to say that those who called themselves of higher castes have perpetrated brutalities on this community and by giving them bad names based on the nature of their professions throughout the centuries. I cannot understand how those who have praised India and Indians have done so? That

*[] English Translation of Hindustani speech.

country is very low and mean in which discrimination has been made and is being made between man and man. For centuries together the untouchables and the Harijans of India have been so badly down-trodden that they cannot be compensated even if the reins of Indian Government are handed over to them. In this age of progress a day will dawn when the future generations will read about untouchability and the deeds of our forefathers will make them hang their heads in shame. In this connection I would like to say that the centuries old communalism which had dominated the Indian mind in some shape or the other, and everything was measured in accordance with this maxim, so much so that even water was given a Hindu as well as a Muslim name. This ancient land was partitioned and two years ago Hindus, Sikhs and Muslims became the victims of this communalism and the creation of God was sacrificed at its altar. By putting an end to this communalism once for all, politics and religion have been divorced from each other. So far as the Provinces and the Centre are concerned, it has been seen that Centre has been made very strong and powerful. It is but proper that the Central Government of such a big country must be very strong as history shows, whenever the Centre was weak the Governors of the Provinces rose in rebellion, and unfurled their own flags. I cannot help saying that the Englishmen, for the first time united the country and ushered in a strong Central Government and brought home to every Indian the feeling that he was an Indian. But we have been bred in such a narrow atmosphere for centuries that even today I feel that we think in terms of provinces and communities and not in terms of India as a whole. I admit that, hand in hand with the Centre all the parts of the country must also be strong. Because until and unless all the parts of the body are not strong mentally, physically and spiritually, the body as a whole, can never be strong. But in order to take work from all parts there should be a brain in the centre which should handle all the parts properly and justly and afford opportunities to all for proper development. This should be the shape of our Centre and the Provinces.

Lastly, as a representative of the State, I am indebted to the beloved President of this Assembly, Dr. Rajendra Prasad, as the States have been given equal share in the Constitution and that the position of the States have been placed at par with other Provinces. Now I must thank our beloved leader Sardar Patel who with a strong hand and in a appreciable way has snatched the power from the Rajas and has entrusted it to the people. Having spelt the doom of centuries old system, the Princes and the people have been brought in one line. Sir, I see in this Constitution that the despotic rule has come to an end for ever and the day of popular rule has dawned.]

Shri Jaipal Singh (Bihar: General): Mr. President, Sir, may I venture to ignore your counsel against repetition and add my own tribute, unqualified tribute, for the tremendous work Dr. Ambedkar and his hard-worked team have but in the making of the new Constitution and also, Sir, may I humbly add, for the inexhaustible patience you yourself have shown in guiding our deliberations. While I record my own thanks to you, Sir, and, to the members of the Drafting Committee, I am not oblivious of the enormous amount of work, seen and unseen, that has been put in by the Constituent Assembly Secretariat. I think the whole House owes a great deal to the highest and to the lowest members of the staff of the Constituent Assembly Secretariat. I know we, M.C.As., by virtue of the position we hold in this House, are exacting persons, but they have been diligent and loyal in their services to us and I think we should acknowledge our recognition of the services, willingness and diligence they have shown throughout the time that we have been here. I do hope that the sanctity of the Constitution will, in no way, be lessened by the unemployment of any member of the staff of the Constituent Assembly Secretariat.

[Shri Jaipal Singh]

Personally I would like to see, that, somehow or other, everyone, who has worked with us in the making of the Constitution, is absorbed elsewhere if he cannot be absorbed in the future Secretariat from next year. I do not think, Sir, it is necessary for me to single out any particular section of the Secretariat. We all know how prompt services have been given to us whether they related to the making of accounts or to the supply of petrol or to the providing of suitable accommodation and furniture in our houses or anything like that whatever we have asked for has been willingly given us and that also promptly. I feel I must record my own recognition because, as a member of the Staff and Finance Committee, I know the amount of work they have put in and in recording this recognition I am thinking more of the people whose work is unseen, people who happen to work in the upper stories of the Council House and not merely the people whose faces we are accustomed to see every day.

Sir, I do not think it is necessary for me to say anything about the Constitution. The Constitution has been made by us. I know that some sections individually are not fully satisfied. That is as it should be. No Constitution can please all the different sections of any country, let alone a country like India, but, the overall picture, to my mind, is very satisfactory and not disappointing. I have great faith that this man-made Constitution will succeed if men will be genuine and generous enough in the working of the Constitution. After all, the various potential facets of this Constitution may be disturbing at this stage. There is potentiality for the new Constitution being democratic. There is also the other aspect, rather disconcerting, of the Constitution being converted into a totalitarian administration. Everything is there. It is for us men to make this what we want it to be. There is that flexibility. It is not the written word that matters. It is the life that we put into that written word that will count in the long run.

I know there are many things regarding Adibasis that are not written in the Constitution. For example, we do not know yet, Sir, how the President is going to treat the question of scheduling of the areas. We do not know, for example, what kind of inventory of the various Scheduled Tribes will be made. We do not know yet as to whether there will be coordinated administration from the Centre so that the work in the various provinces, where we have Scheduled Tribes, will be regulated and directed. None of these things are mentioned and yet I have faith enough to say that I am looking forward to a great future for the Scheduled Tribes, as well as for others, because, it would be for us to make or mar the future of our country, to make or mar the Constitution. Sir, it is in that great faith I give my unqualified support to the Constitution.

Shri A. Thanu Pillai (Travancore State) : Mr. President, Sir, we are now coming to the close of a very important task. We are adopting finally the Constitution for a very great country with an unbroken past, which few other countries can claim and that devoutly wished for future which is to satisfy the aspirations embodied in the Chapters on Fundamental Rights and the Directive Principles of State Policy.

Sir, the articles have all been discussed at full length at the second reading stage and the criticisms have been fully answered by no less an advocate than Dr. Ambedkar and we have come to the end of our labours. I think, Sir, that Adult Franchise, in spite of the objections that may be raised against it, is really the core of our Constitution and it is but just and right that we have, adopted it. I am really surprised that even today objections are raised to Adult Franchise. Not only from the stand-point of democratic principles but from the facts of the situation in the country, it is clearly indispensable. We must

look at the temper of the nation today. Will anything other than adult franchise satisfy the people? I am definitely of the view that nothing short of it could have formed the basis of our Constitution.

Now, Sir, I have very little time allowed to me and I am now chiefly interested only in pointing out a few things which should be kept in view in implementing the Constitution. I fully agree with Mr. Santhanam who said that the contents of the Constitution should be made familiar to the entire country and elections should be held as early as possible. Sir, various defects have been pointed out but I agree with the general view that the control of affairs of our nation is now sought to be placed in the hands of the people themselves. But that should be done as early as possible. Any delay may be even dangerous and in regard to elections, Sir, there are various difficulties. I know from personal experience what an election on the basis of adult franchise is, but I must point out one fact to this House; there is no question of my being misunderstood—an election on the basis of adult franchise should be a real election; it should be a free election and everything should be done by all parties concerned, political leaders, leaders of parties, those that are in Governments today to see that the elections on adult franchise basis are really free. Sir, I know that even under Congress Governments, elections are not free today. We have got the legacy of mis-conduct on the part of officers of Governments in the past. The previous Governments in some parts of the country, at any rate, indulged in all manner of vagaries and unfair means in bringing about results favourable to candidates whom they liked in elections and in some places even now in elections conducted by Congress Governments, I am very sorry to have to point out that the same policy is pursued. It is the duty of whoever is in power to see—and the Central Government should particularly see that elections are free. I am very glad that under the new Constitution power is placed in the hands of the Centre to see to this; that is to say, the Election Commission is to be appointed by the Central Government and the full control of elections, the preparation of rolls, the way in which election disputes are dealt with,—all this has to be attended to by that Commission appointed by the Centre. However, much I may differ from the general view that has been adopted in framing the Constitution that the powers of the Centre should be, as extensive and those of the units as restricted as possible,—I agree in this that provision should be made to ensure that the elections are free.

Now there are various complaints against the Congress Governments that the Governments are not doing anything for the people, that the Governments are not above corruption and so on. The effective answer to these complaints will be to place power in the hands of the people themselves and do it in an effective and proper way. Then the responsibility will be on the people themselves. This result can be really achieved only if the elections are free. Governmental power and advantages accruing to a party from being in power should not in any way, be made use of for securing favourable results in elections. If this principle is ignored, the result will be negation of democracy. The present Government, not being the result of elections on the basis of adult franchise cannot be said to be a people's government in the full sense of the term, but we should have such a Government as early as possible.

Now, Sir, I wish to refer to one or two other matters. In regard to the formation of provinces on a linguistic basis, my view is—it may be taken for what it is worth—that language is made too much of in the formation of provinces. No doubt, language has a part to play in administration but it is not everything. There are other equally vital and important considerations to be taken into account in forming new provinces. For instance in regard to the proposal by some that Cochin and Travancore along Malabar should be formed into a Kerala Province, I ask people responsible for it to examine the matter as

[Shri A. Thanu Pillai]

to how far that area by itself would form an economically sound unit. Look at the economic aspect of the matter also and see whether it is that kind of province with inadequate resources that we should form in the future or whether, if a change in the present set up is necessary, that area should be merged with the other districts of the Madras province so that a compact strong and resourceful South Indian State may emerge. I place this for the consideration of all those who are interested in this question. Sir, it is now said that the Tamils do not want the Malayalees in their province and the Malayalees cannot get on with the Tamils. If that is the view people take how is the Union of India to be maintained? As a result of the idea of linguistic provinces a situation has arisen in which people say they cannot get on with others who speak languages different from their own. I fail to see any reason for this. In my own State there are Tamils and Malayalees and we are getting on well together. This loud cry of linguistic province now begins to create difficulties. I want those that are responsible to take a sober view of the matter and look at the real issues involved.

Now, Sir, in regard to the question of language itself I have got a few suggestions to make. I am very glad that in the Constitution a provision has been made that Hindi may be adopted as the official language of any State. My point is this. I want to place great emphasis on that provision and to suggest that even though a province is not a Hindi-speaking province, for governmental purposes at the higher levels of administrative work Hindi should be adopted. Hindi should be given the place that English occupies today, in our national political life. I know my opinion may not be generally accepted in non-Hindi speaking provinces and States. I find before me eminent persons who are in control of educational affairs who have taken the view that the regional languages must be adopted as the official language in the States and Provinces. I take a different view, Sir. I want Hindi to be enthroned in the place English occupies today when English is to go. We must not forget the fact that whatever be our differences with Englishmen, they have conferred on us a great blessing. How are we here today? How am I able to be understood by you and how can I understand you? It is because of the common language; it is not because it is English, it is because of the commonness of that language so far as our country today is concerned. I am thinking of having an Indian language and that language can only be Hindi today and, therefore Hindi should be given that place. Sir, you just consider how many common matters we shall have to deal with in the future. If a man from Travancore or Tamilnad wishes to come here to transact business, he must know Hindi. It may be a research institute, it may be an all India Conference; if one wants to take part in any of these one must know Hindi. There are one-thousand and one other things of common interest. The legislature here must be composed of Hindi knowing men. What about the legislature in the Tamilnad? Why not everybody try to know Hindi? Hindi must be made a compulsory subject of study throughout the country. At any rate, Hindi should be given the place that English occupies today. Not that I want that English should be banished. Our children are capable of learning three languages: Hindi, English and the mother tongue. Anyway, this is my view. Some people say that unless you carry on the administration in Tamilnad in Tamil, the villagers will not understand you and the administration of Madras will become impossible. I differ from this view. So far as the villagers are concerned, you can issue instructions, you can issue orders, in the language known to him. So far as the higher levels of administrative work are concerned, in the provincial secretariat, you must have Hindi. Otherwise, the whole country will find itself at a great disadvantage and will experience great difficulty and the administration will be practically impossible. I would have taken more time of the House on this question but I do not want to go against your directions.

There is one other matter which I would like to touch upon. The Centre is given immense power. Personally, I feel that the Centre has been given too much power. There must have been a conviction in the minds of those that are responsible for the shaping of these provisions that the Centre will always be unerring and infallible and the Provinces are likely to err. It is on this basis that the whole superstructure is built. I differ from this view. The Provinces are as capable of taking care of themselves as the Centre and that fact must be recognised.

I would only mention one or two points. Take legislation. In all important matters, Central legislation must prevail whether the subject is in the Concurrent List or in the Central List. I must bring to the notice of this House and of those that are responsible for future legislation that in some parts of India progress has been made in some directions which has not been made throughout the country or in the major provinces. I may refer to the abolition of the death penalty in Travancore. That is a matter for serious consideration. On the 26th of January 1950, a Travancore culprit who is guilty of murder stands the chance of being hanged. Till then, he is free from that. Not that I want to help the murderer; it is a humane law that we have adopted, and there is very strong opinion in favour of that. Are we to go back? Can we do otherwise than going back to the hangman? We have to go back to the hangman on the 26th of January. What I want you to remember is that you should patiently consider the progress made even in small parts of the country and no legislation should have the effect of undoing the good that has already been done. Uniformity should not lead to retrogression. The higher standards reached in any part of the country should be adopted in respect of the whole country. I may also mention one other thing. This is particularly relevant now because the Hindu Code Bill is before the legislature. In our place, among the Marumakathayees, the personal law, the family law, the law of marriage and so forth is such.....

Shri L. Krishnaswami Bharathi (Madras : General) : We are not now discussing the Hindu Code Bill here.

Shri A. Thanu Pillai : I am not discussing that; I am only referring to that Bill to illustrate a point and I think I am perfectly within my rights in doing that. What I wanted to say is, our law is more progressive from the point of view of modern conceptions of life, and if we are to go back to the ancient Hindu Law with its narrow religious basis, the result will be unfortunate. If you wish to provide for a common civil code for India, that must be in consonance with modern advanced conceptions of life. Our women are free; our marriage laws are in consonance with the up-to-date concepts of social existence. Have we to go back to conceptions unacceptable in the modern world? I want only the future legislature to consider these aspects of the matter. Not that I want to discuss the Hindu Code Bill here; I have experience enough not to discuss it here. Mr. Bharathi may understand that.

In regard to interference on the part of the Centre, I may just refer to one more point. The Centre should be strong, I agree. But the strength of the Centre does not consist in the number of subjects to be handled by the Centre, but more in the willing co-operation and willing acquiescence of the Provinces and States in what the Centre is doing. That willing co-operation and willing acquiescence, is not to be achieved by tightening the ropes round the necks of the Provinces and units, but by giving ample scope to the units to develop. I am afraid we have made a mistake even with regard to the appointment of the Governor. The Governor is practically a nominal entity; he could have been left to the Provinces to elect.

I do not want to take up more of the time of the House. I hope any way that all the provisions will be so implemented that there will be as little friction

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as possible and the Provinces will feel that they have come to their own, that they are given freedom to develop themselves and that the Centre will take care to see that the feeling is engendered and fostered.

The duty of the Centre is immense. Today I read in the papers that as far as public health is concerned, to combat tuberculosis alone, the Honourable Rajkumari Amrit Kaur wants 400 crores to start with and an annual recurring expenditure of 100 crores. There are, besides, malaria and a hundred other diseases, from the point of view of public health. Take education. You complain against adult franchise. We must educate all our children. How many crores would we require for it? The financial resources of the units are curtailed to the limit. Even a fresh tax they cannot impose; that the Centre alone can do. Under these circumstances, it is the duty of the Centre to see that the country develops. This Constituent Assembly has placed upon the Centre a burden that it will find difficult to bear. That is the result of the provisions of the Constitution. When the financial resources of the States are so restricted, when every thing that may be newly tapped has been left to the Centre, how can you ask the States to develop industries, agriculture, education, public health and improve labour conditions? All the resources are concentrated in the hands of the Centre. The Centre has therefore the duty to find fund for national development in all directions. I hope the Centre, will be equal to the task and our country will proceed from progress to progress and the Constitution that we are now enacting will pave the way for the glorious India that we have in view.

One more world, Sir. It is said that this constitution is inelastic. It is not. No doubt, certain provisions could have been better framed. Even in regard to personal liberty, what I find is that article 22 gives the power to formulate the law in that regard to the legislature, that means, the representatives of the entire people. You may pass any law that you like. I do not overlook the fact that the amendment of the Constitution in regard to certain matters requires the consent of a two-third majority and of a majority of the legislatures of the States. How these provisions will be worked, how they would avoid friction, how they will be allowed to function smoothly, all that will largely depend upon the spirit of co-operation between the Centre and the units.

In conclusion, Sir, from what I have been able to see of the procedure of this Assembly, I must tell you I am amazed at the patience you have been showing. Even if it be a question of our communication with the Moon, if the rules permitted it you were prepared to put it to the vote. (2) This was the extent of patience that we witnessed here on your part. I must also be permitted to add one word of thankfulness to all those concerned, for the ability of Dr. Ambedkar and Mr. Alladi Krishnaswami Ayyar, for the extreme interest that Mr. T. T. Krishnamachari and Mr. Santhanam and others took in the framing of the Constitution—when I mention a few of these names, it does not mean that there are not other names to be mentioned. Everybody concerned has functioned well. Let us hope that this occasion will be recorded in the annals of our history as the occasion when the Constitution was framed which led to the fame and glory of the country, to plenty and prosperity, to contentment and peace. Let us always remember with gratitude the great man who, through not with us in body, is really now guiding our destinies by his writings and speeches, and by the inspiration that he was able to spread by his life throughout the land and throughout the world. Let ours be the country which will spread peace and good-will among the nations of the world.

Thank you, Sir.

Shri O. V. Alagesan (Madras : General) : Mr. President, Sir, the Drafting Committee and all those that have been connected with its labours have been

rightly congratulated and we are sure to miss the stentorian voice of Dr. Ambedkar explaining in a crystal clear manner the provisions of the Constitution and also the shrill voice of my Friend Mr. T. T. Krishnamachari whose contribution to the making of this Constitution everybody acknowledges .

Sir, one of the criticism against the Constitution is its lengthiness. In having precedents there is advantage as well as disadvantage. It is advantageous because it shows on way. It is disadvantageous because it binds us down to a certain extent and our initiative is to that extent restricted. The Government of India Act was no doubt the precedent in this connection and it will not be wrong to say that our Constitution has been a glorified edition of the Government of India Act—of course, with this difference that under that Act the power rested with the British people whereas here the Indian people are the sole masters. In our country we are used to the long epics, Ramayana and Mahabharatha, and so it is in keeping with the traditions of this country that we are having this epic of a Constitution. If I may be permitted to say so, the Drafting Committee to a certain extent is responsible for the lengthiness of this document. They in their wisdom wanted to provide for everything and they did not want to leave anything for posterity. They tried to provide against every difficulty than may arise in the future. Like an artist who draws and re-draws to make a perfect picture, the Drafting Committee went on adding, amending and omitting to make a perfect Constitution emboldened by the indulgence shown to them by this House. As a result, we are having a lengthy document which is full of details which can very well have been left to the future Parliament.

Again there is the criticism that we took too much time for making this Constitution. It is not right to say that. If we calculate the number of days that this House actually sat, then it will be found that there had been no waste of time. If anybody has still doubts, we have only to remember Pakistan. They also started Constitution-making with us, though a little later. They have still not made any progress whereas we have finished our Constitution and we are going to put it into effect. That apart there is a more important reason why this period should be considered the minimum period for the making of this Constitution. As one speaker pointed out during this period of three years, time was not standing still. Revolutionary changes or dynamic changes—as the Prime Minister is found of putting—have been taking place. India when it was handed over to us was heterogeneous politically. Then the mighty task of welding this country into one homogeneous political whole, the integrating it economically and financially began and it is still going on and our leaders deserve every credit and congratulations for this achievement of theirs.

When you take all these into consideration, nobody will say that we took more time than is necessary. Not only that: a constitution is expected to embody and preserve the revolution that has preceded its making. In our case, the present Constitution has not only embodied and preserved the revolution that has preceded it but has also crystallised the revolutionary changes that were taking shape simultaneously with its making. Our Constitution is unique in this respect. So We can very well be proud of this Constitution.

At this time when all India rejoices at having got this Constitution, I would request the House to remember the foreign pockets in this country which still disfigure the political map of this land. Sir, they are our kith and kin, brothers and sisters and—when the whole country rejoices, they are unable to share in the general rejoicing. They have separated from us by an unnatural wall. If I am asked to wait for another six months so that those

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possessions may be brought within the ambit of this Constitution, I shall very gladly do so and it will not be time wasted. But that is no to be. We have to wait yet At present, we can only hope that our leaders who have so much achievement to their credit will also take up this question without delay and solve it to our satisfaction and see to the disappearance of the wall that separates Indians from Indians.

Another very serious criticism was that under this Constitution democracy will degenerate into a dictatorship. I do not see any warrant for this assumption. Our own experience gives the lie direct such a fear. We see both in this House and in the provincial legislatures only one party, that is, the Congress Party, that is predominating. The opposition inside the legislatures is unorganized—it is not worth the name of opposition. The opposition parties outside the country function in an irresponsible way. One party that is wedded to violence and sabotage wants to create chaos in the country so that it can somehow capture power. There is another party, through it is not weeded to violence, which being sure that it will not be called upon in the near future to shoulder the burdens of office is mounting all sorts of impractical slogans and platitudes and trying to mislead the people. Under these circumstances the temptation for the Congress to behave as a one party dictatorship is very great. But, what do we see? does the Congress party behave in a dictatorial manner? No. It can be said without any fear of contradiction that if there is one party which, having so much power in its hands, took all the other points of view into consideration and even accommodated them, it is the Congress party. Our leaders are having a devotional following in this country. No other leaders had such a backing and such a following in any other country. Our Leaders could very well have converted their rule into a dictatorship and there would not have been much objection had they done so. They did not do any such thing. They behaved as perfect democratic leaders. I say, this augurs well for this Constitution and democracy in this country. Democracy will not be endangered under this Constitution and we will not have any dictatorship and there is absolutely no warrant for such a fear. After all nobody can say that democracy can be protected by the written word of the Constitution. Let us take only one example. In the past we had democratic elections both in British India and in French India. Here it was possible for the party in opposition to the government of the day to come in a majority through the ballot-box. In French India also the ballot-box was the arbiter. But there it was never possible for the party which was not backed by the government of the day to capture even a single seat. So it is not as if democracy is protected by what we write in the Constitution. It is more in the working, in the spirit in which it is worked that democracy will be safe rather than by any written safeguards in the Constitution. Looked at that way, we can boldly claim that there will be no room for endangering democracy under this Constitution, and it will work perfectly well. Of course nobody can say that this Constitution is infallible. NO Constitution can be perfect—I will go even to the extent of saying that no Constitution need be perfect. Everything lies in the working of the Constitution. The proof of the pudding is in the eating.

There is another criticism that the village as a political unit has not been recognized. I feat that behind the back of this criticism is distrust of adult franchise. What was conceived under the village unit system was that the village voters would be called upon to elect the Panchayats and only the members of the Panchayats were to take part in the elections to the various assemblies, Provincial and Central. But now, it is the village voter himself who will be called upon to weigh the issues before the country and elect his representative, and so he will directly participate in the election. I claim this to be a more

progressive arrangement than having village units which elect the electorate indirectly. Not only that; it has been said that the genius of this country does not find expression in this Constitution. I do not understand what is concretely meant by this charge. If the genius of this country is to be taken, then we all along had only had only monarchy. Only the monarchical system was prevalent in this country. But nobody would seriously suggest that we should now go aback to the monarchical system. In fact, we are removing the relics of monarchy at present. So, this charge that the genius of the country does not find a place in the Constitution is a meaningless one or rather it is more sentimental than substantial. No country can claim to have invented all the ideas in the religious and philosophical spheres as well as in the political and social spheres. After all, every country is great in its own way, and one country has to take anything that is good from other countries. Just as the Western countries have to take from us the philosophical and religious thoughts of our ancient wise men, we have to take then political and social institutions from other lands, and there is nothing wrong in it.

Sir, another charge is that is Constitution is full of checks and safeguards, and it curtails freedom of the individual and restricts State autonomy. I do not take it in that light. These safeguards are only as fences intended to protect the infant freedom and democracy from stray cattle. At tiger cannot say, for instance, that is should be free to kill the lambs and take them away. This is a my reply when the cry that civil liberty is in danger is raised and all these provisions are thrown in our face. Though for me and for many others who have known what detention is, the article relating to preventive detention is a bitter pill to swallow, we may expect that that weapon will be very sparingly used and there will be no necessity to use it, unless under very grave emergency, when the stability of the entire society is threatened by subversive elements.

Sir, under this Constitution, the foundations of a secular democracy have been well and truly laid, and if we are true to ourselves and to our traditions, and to our leader Mahatma Gandhi, we can safely hope that we will march from progress to progress and convert this Constitution into a blessing for this ancient land.

Mr. President : Before adjourning the House, I desire to give to the House an idea of the programme. This afternoon, we shall sit for two hours, and I expect all those Members who have not had a chance to speak, to be present here to take their chance then. To-morrow, in the afternoon, say from there or half-past three, Dr. Ambedkar would speak, and before that one other Member of the Drafting Committee would like to take a little time in dealing with the points which have been raised in the course of the discussion. The rest of the time will be given to other Members to speak, and I hope that between this afternoon and whatever time we can spare to-morrow, I shall be permitted to accommodate everybody who has given his name to me. That can be done if Members prove as reasonable as they have been today.

Then on Saturday morning, I propose to put the motion to vote; and after the motion has been carried, I would authenticate the Constitution here in the presence of this House. But before I put the motion to vote, if the members permit me I would like to say a few words.

The House now stands adjourned to

Shri Lakshmi Kanta Maitra (West Bengal : General) : Authentication means the signature of all the Members?

Mr. President : Not the signature of all the Members. I might just explain. There are certain articles in the Constitution which come into force immediately. The bulk of the Constitution comes into force on the 26th January;

[Mr. President]

so for enabling work to be done under these articles which come into force immediately, I shall have to authenticate the Constitution day after tomorrow, and I will do that.

It is proposed to have another session of the Assembly, say on the 24th or 25th January and on that day, we shall have the election of the President and I would ask all the Members to sign the Constitution. It is proposed to have by that time, the Constitution ready in a form in which the signature could be taken from all the Members. There was a suggestion that we should have a hand-written copy of the Constitution made. It was pressed upon me by several Members that that should be done, and we are arranging with some calligraphists to have a complete copy by then. And there will also be a printed copy ready, and Members may sign either both or any of the two, whichever they like. It will not be possible to supply to Members a copy with all the signatures then; but we might consider later on, if it is not very expensive affair, whether we should not be able to supply to each Member a copy of the Constitution bearing all the signatures so that. ...

Shri B. L. Sondhi (East Punjab : General) : Cannot the members pay for it if they like?

Mr. President : We shall bear that also in mind, and if Members are willing to pay, probably the question of cost may not arise.

Some Honourable Members : Yes, Sir.

Shri L. Krishnaswami Bharathi : What about the suggestion of Mr. Santhanam that all the Members may be supplied with copies of Constitution signed by you?

Mr. President : Well, I do not mind signing about three hundred copies, it does not make much difference, we can do that. But apart from that I was thinking of the copies which would bear the signatures or photographic copy of the signatures of all the members, which they may preserve as a memento, if they like.

This is what is arranged at present, and I hope we shall be able to keep to the timetable as also to those proposals which I have just indicated.

The House stands adjourned till three O'clock, this afternoon.

The Assembly then adjourned for Lunch till 3 P.M.

The Assembly reassembled after lunch at Three P. M. Mr. President (the Honourable Dr. Rajendra Prasad) in the chair.

Shri L. Krishnaswami Bharathi : Sir, no period in the history of India has contributed more memorable events than the short space of the past three years. Looking back upon the past three years since we commenced the stupendous task of framing this Constitution, one is bound to be struck by the kaleidoscopic changes that have happened in the history of our country.

Five memorable events of great magnitude and significance marked out this eventful period. To state them *seriatim*, they are: 1. the partition of our country, 2. the achievement of independence, 3. the passing away of Mahatma Gandhi, the Father of the nation, 4. the integration of what are known as India States, and last but not least, 5. the setting of the Constitution of Free India.

I do not propose to deal in detail with these matters. A great number of Members have spoken on this Constitution. Some have criticized it and some have praised it. No one has condemned it wholesale, nor has anyone accepted it in full. It is a course not possible to get the unanimous approval of the whole House, constituted as it is. But, Sir, I think we can claim that this Constitution represents the greatest measure of agreement amongst the Members.

This Constitution contains some special and redeeming features, but if it is to be judged from the fundamental basis of Gandhian ideology, I must confess that it falls far short of it. It is perhaps wrong to say that it has totally ignored Gandhiji's ideology, but I am clearly of the view that the approach of this Constitution to the basis and fundamental principle of Gandhism is half-hearted, halting and hesitant.

Time forbids me to go into detail. Let me, however, mention a few illustrations. The removal of the charkha from the National Flag is one such. I know that Mahatma Gandhi did not reconcile himself to the change till his death. Secondly, Gandhiji's idea of decentralisation of democracy has not been given effect to. The Gandhian ideal of economic self-sufficiency in regard to the prime necessities of life—food and cloth—at the village level has not been incorporated nor emphasised. Thirdly, the high salary of officials is totally opposed to the Gandhian viewpoint. Fourthly, salt duty has not been prohibited constitutionally. Last but not least, Gandhiji's wishes in regard to the State language have been ignored. I do not propose to go into these matters in detail.

I would, however, like to say a few words in regard to the language question. Although I am glad that the Assembly has unanimously accepted it, the resolution in regard to State language is—to us the Shakespearian double superlative—"the most unkindest cut of all". I very much regret that we have not been able to accept the guidance of Mahatma Gandhi in this regard. Gandhiji's definition of State language was, that it should be a language "commonly spoken and easily understood by the masses in North India" which is neither over-Sanskritized nor over-Persianised, that is to say, Hindi-*plus*-Urdu-Hindustani. I do not know how far this idea is getting implemented by the protagonists of Hindi. My own view is that they are not doing it and are probably going in the opposite direction. I happened to read a very interesting book, which contained much useful information. Grearson, the greatest expert on languages, in his monumental work "Linguistic Survey of India" has made certain very useful and important observations. He is of the view that the language must be developed in terms of the masses. Any attempt at Sankritization will bring about a rift between the learned and the ordinary people,—a view which was very strongly held by Mahatma Gandhi.

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He quotes a very old Sanskrit Professor of Benars "Whenever a Hindi author takes pen in hand, he ceases to be sober and is Sanskrit-drunk." I do not know how far that is correct, but my own personal experience is that the love for Hindi is some of its protagonistis is so much that sometimes the overstep the bounds of sobriety. I do not know if we are to congratulate our friends, the protagonists of Hindi for accepting the present name of the State language I owe it to the great linguistic Grearson again for the information that "Hindi" is a Persian word. This may perhaps demonstrate that the protagonists of Hindi are after all not so anti-Urdu or anti-Persian as they are painted to be.

The article on language is the result of serious thought and careful consideration. We have accepted it and we in the South assure you that we will stand by it. India as a nation must have a State language, and of the languages in India, Hindi as defined by Mahatamaji has to be that language. There cannot be and should not be two opinions on the matter. But the more important thing is the whole approach to the matter. We in South India are at a disadvantage. It is easy for people in North India to adopt Hindi as the official language, because it happens to be their mother tongue. There is a movement in South resisting the introduction of Hindi, but we must go and explain the people there that this is not going to displace their mother tongue. Mr. Pattam Thanu Pillai referred to the question this morning. I do not know what is happening in Trivandrum, but so far as my part of the country is concerned, I am glad that we have incorporated it in the Constitution that the idea of Hindi and the necessity for its introduction is not to work to the detriment of the regional languages. The regional languages will have full play. We require a common State language only for all-India purposes, and this language can only be Hindi. But this morning Mr. Pattam Thanu Pillai said that they could have Hindi in their own respective spheres. By all means, they can have it in Trivandrum or the United State of Cochin and Travancore.

Shri P. T. Chacko : The same is the feeling there also; make no mistake.

Shri L. Krishnaswami Bharathi : I am glad to be told so. It is not correct and all we can ask for is that whereas Provinces can have their own language, they must function in terms of the whole nation; other languages should not work to the detriment of the interests of the national language. The correspondence for India can only be in Hindi. It cannot be in any other language. Those responsible for administration in Tamilnad, in Andhra Desha etc. can only deal with it in Hindi. Therefore, we will go and tell the people that there is nothing wrong in the adoption of Hindi. By all means, they can develop their own regional languages and work in them, but they must have a national language. There is not going to be a question of imposition. That is the most important thing which my friends from North India have to understand and explain. This is a difficult task. We can explain to the people that there is nothing wrong about it. But the speech of Members like Mr. Pattam Thanu Pillai will give a very wrong impression. We have got to tell them that it is his individual opinion. Another Member from Travancore also says that the feeling in Travancore is the same as I have expressed. I am very clear in my mind that it is not our object to work to the detriment of the mother-tongue nor of the State language.

Shri A. Thanu Pillai : I wish to inform my friend that he has misunderstood me, if he took it that I meant to say that Hindi should work against the interests of the mother-tongue. What I said with that in the higher levels of the administrative work Hindi should be adopted. That is not what he understood.

Shri L. Krishnaswami Bharathi : My own impression is that whenever it is a State language it may work to the detriment though it may not be the intention, of the mother tongue. When English was the State language, it worked to the great detriment of the other languages of India, and in other spheres also it was injurious to the mother tongue. It is only in that sense I said that the effect of introducing Hindi in the administration of the provinces will be detrimental to the mother tongue of the provinces. The idea of the creation of linguistic provinces is to foster the mother tongue of the provinces. Some people think that this is anti-national. I believe on the other hand that this is perfectly consistent with national interests. We work in different areas in the interests of the Congress and we appeal to the people only in the regional languages. The administration must be carried on in the language of the people so that there may be identity of interest and feeling between the Government and the governed. It is in that light I said that we must have regional languages. That is the very basis of the linguistic provinces. This does not mean disintegration or working in provincial or parochial interests.

Then there is the question of the numerals. The solution on this question is one of which we ought to be proud. My honourable Friend Mr. Jaspat Roy Kapoor said that these are English numbers and I interrupted him saying that it is wrong to call them English numerals any more. They are really Indian numerals. The original of these numerals was Indian. In support of my contention I would refer to the fact that 2,000 years ago, in the Asoka Pillar, in the Nanaghat Inscriptions and in the Nasik caves all these numerals appear. Numerals one, four and six appear in the Asoka Pillar, two, four and seven are found in the Nanaghat Inscriptions and the rest are there cut out in the Nasik caves of the first and second century. All these forms bear considerable resemblance to the present forms of these numerals. To say that they are English is not therefore correct. Mr. Kapoor said that the Members who supported these numerals discovered this fact only after the debate regarding them started. Sir, it may perhaps be of interest to honourable Members to know that our Prime Minister Pandit Jawaharlal Nehru, writing some years ago, has referred to this aspect of the matter. It is very interesting. He called the numerals 'Our Indian numerals'. Sir, at page 248....

Mr. President : May I remind the honourable Members that if he goes on at this rate it will be very difficult to find time for other Members to have their say.

Shri L. Krishnaswami Bharathi : Sir, I will soon finish. The observation of Pandit Nehru in this connection is very interesting. Panditji has said : "The clumsy method of using and counting frame, and the use of Roman and such like numerals, had long retarded progress when the ten Indian numerals, including the zero sign, liberated the human mind from these restrictions and threw a flood of light on the behaviour of numbers. These number symbols were unique and entirely different from all other symbols that had been in use in other countries. They are common enough today and we take them for granted." Sir, I will take only a few minutes more.

One of the redeeming features of this Constitution is the abolition of the separate electorates. I am glad that this has been made possible with the willing consent of the representative Members of the respective communities. I must particularly congratulate the Members of the Muslim community for agreeing to give up special representation in the legislatures. It is no small matter and it is not keeping with the spirit of the times. The question naturally arises how far and to what extent the leaders and our people will give effect to it when the actual working comes. Are we sure that the majority community has shed its communalism so that the candidates belonging to the other communities may be elected without reference to their religion? Future alone can

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give the answer. I am anxious that the majority community must play the game fair. At the same time there is a heavy responsibility cast on the members of the minority communities to conduct themselves in such a way as to deserve the confidence of the other communities. This is possible only if they merge politically with the rest of the population and not perpetuate communalism by having communal political organisations. I think the time has come for the Muslim League to close down as a political organisation and work on the non-political plane. The organisation must give up its political role. I am sorry that Pakistan is making it difficult for us to create that atmosphere. But, as Mahatma Gandhi has said: Let us not copy them in their bad manners. I hope that the necessary atmosphere will be created so that there will be no political communal organisation to rouse once again communal bitterness. I member, Sir, that our Government have passed a Resolution to that effect immediately after the death of Mahatma Gandhi. I hope they will implement it and that the people outside will make it impossible for any communal organisation to work on the political plane.

Sir, the question of adult franchise is another redeeming feature of the Constitution. I welcome it. In a country where a large percentage of the people are illiterate, doubts are entertained whether we can trust them to do the right thing. My own experience is that the masses have the instinctive power or habit and intelligence of choosing the right person or the right party. But one is clear that if democracy is to function, it certainly must have a large number of its population literate. Thus only the mind of the masses will be reflected in the Government. But Sir, the elections are not as they ought to be. I have been a candidate at some of the hotly contested elections to the Legislative Assembly and I have won. I have noticed that it is unfortunate that a large number of people give false votes. False presentation is not rare. A man impersonates 15 to 20 others and thus multiplies the votes. An honourable Member told me about a lady voter that she impersonated 13 lady voters. I have myself heard people saying that they voted in the name of more than a dozen others. That is a very sorry state of affairs. Unless this evil practice is checked, democracy will become meaningless. Such a practice will increase the number of votes any candidates gets, but it will not reflect the true wish and will of the people.

(At this stage, Mr. President rang the bell.)

I am finishing, Sir.

Mr. President : You have taken more than twenty-five minutes.

Shri L. Krishnaswami Bharathi : I am sorry. I will finish soon. I am therefore anxious that polling should be made fool-proof if that is possible. I think it is possible and my suggestion therefore is this : The voters must be given what are known as identification cards, preferably with photos. Well, people may raise all sorts of objections but there is no time for me to touch upon this important matter. If identification cards are given beforehand, no voter can vote for somebody else.

Another suggestion that I would like to make in this. When a voter comes to exercise his vote, immediately after he votes, his fingers should be marked with an indelible mark, which cannot be erased for a day or two. This will show that he has already exercised his vote. These suggestions may be considered.

In conclusion, I feel we could have produced a better Constitution based on Gandhian ideology. Perhaps one must seek solace in the statement that a nation gets what it deserves. I hope, trust and pray, Sir, that the objectives

of the Constitution contained in the Preamble will get fully implemented in the working of the Constitution so that peace, prosperity and plenty may rule in this land.

Shri Ratan Lal Malviya (C.P. & Berar States) : *[Mr. President, Sir, many speeches have been made on the Constitution and it is not necessary for me to repeat the points already made. I will, therefore, try to throw light on those aspects of the Constitution which have not been touched as yet.

I am a representative of Chhatisgarh States and as far as the States are concerned I may say with some pride that these States opened a new chapter in the history of the States. On the 14th and 15th December, 1947 these states were the first among Indian States to merge in India. After that the changes which have taken place in the states during the last two years are known to all. All the five hundred and sixty-two states have been brought to one level. Either they have been merged or have become Centrally administrated areas or have united to form different Unions of States. This has been a great step for the unification of the country. Sir, as regards those states which are Centrally administered, the Centre has taken full responsibility upon itself for their administration and as regards the states which have combined to form unions, there is a provision for them and according to article 371 the responsibility goes to the President himself who will look after them for ten years. Our friends from Mysore and Travancore have criticised this article. It may be that their criticism might have some substance, for before 1947 or before the constitution of the Unions, the States of Travancore and Mysore were more advanced than the Provinces. They are educationally and industrially more advanced. They were therefore believed to be more advanced than even the Provinces. Just as my Friend Shri Thanu Pillai has said that under article 371 of the Constitution, the influence of the Central Government in the administration of the Unions might have an adverse effect and instead of raising the cultural and political level of the states to that of the Provinces it might entirely retard the progress of the states. But I would like to point out that this article was very necessary. Excluding the States of Travancore and Mysore, the other states are so under-developed and backward than unless their affairs are controlled by the Central Government for another 10 years, they cannot be expected to make any progress. Hence for the backward states article 371 is salutary and its inclusion is very necessary.

As regards the Merged states, their administration has been handed over to the provinces under section 290 of the Government of India Act as adopted. Just as article 371 applies to the Unions, so also I would have preferred that for a period of 10 years the same article may have been applied to the Merged states, so that the Central Government could have maintained contact with the conditions of the subjects of those states and also to enable the President to see to their progress.

Sir, I would like to point it out that when I say that the Central Government must keep an eye over the Merged states, I do not mean to censure the Provincial Government of Bihar, Orissa and C. P. This is in no way a vote of no-confidence against our leaders who are holding the reins of administration there. They are recognized leaders and we have all respect for them, but it is essential that these states should be looked after properly for the present. Whatever has happened during the two years is not consoling and therefore it appears necessary that for some period say for five or ten years to come, if article 371 cannot be applied to them, at least the President himself should keep an eye over the affairs of the Merged states.

*[Translation of Hindustani speech.

[Shri Ratan Lal Malviya]

Now I would like to throw light on the States of C. P. particularly as I come from C. P. As regards the States of C.P., Sir, their population is nearly 28 lakhs out of which fourteen and half lakhs are Adibasis. According to Schedule VI, responsibility of the welfare of these Adibasis would be on the President. I submit that even though these have been merged in this way and even though we can count upon the full sympathy of the Provincial administration as provided for under section 290, the responsibility of the Central administration would also continue to remain. I want to make it clear by giving you an example.]*

Mr. President : *[Perhaps you mean Schedule V.]*

Shri Ratan Lal Malviya : *[Yes Sir. By an instance I would like to explain that before article 290 was adopted, we tried hard that our representatives should go to the Provincial Legislatures, but till that article was adopted our representatives could not be taken in the C.P. Assembly. Later on the representatives were nominated to the Provincial Assemblies. It was left necessary to appoint at least one of the states' representatives as a minister. From the newspapers I came to know that in Orissa three Ministers were to be appointed. About the C. P. though such news did appear in newspapers, but I am not aware of any steps being taken to appoint one of the representatives of the States of the C.P. as a Minister. I would like to make it clear that whatever I have said here is not a vote of censure against the C. P. Government. Of course, I wanted to say that the present Ministers of the C. P. have not direct relation with the states and in the absence of a direct relation, the difficulties of the states can be attended to after considerable lapse of time. The people of the backward states cannot find seats in the cabinet as they do not have proper representation. Thus it becomes necessary that there must be a Minister from the States of the C. P.]

One thing more I would like to point out about the Adibasis. I have already said that there are more than 50 per cent. Adibasis in the C. P. Under the supervision of Shri Thakkar Bapa and through his kind attempts a special scheme has been formulated for them and that scheme has been implemented. But that scheme would prove a success only when a Minister from the states is taken in the Cabinet and is put in charge of the scheme. I thank Shri Thakkar Bapa for all this.

I want to bring to you notice a fact which is quite fresh, and that is about Vindhya Pradesh. Vindhya Pradesh adjoins Chhattisgarh, and the boundary of Vindhya Pradesh is about four miles from the place where I live. I am more or less connected with the politics of Vindhya Pradesh of which I have got a good knowledge. Whatever is published about it in the newspapers is known to me. I also know how the political affairs of that state have deteriorated. The area and population of Vindhya Pradesh are so small that it cannot make any progress as a free state. So its merger is essential. So far I know about the people of that place, there are two groups. One is against the merger and their number is very great, the other is in favour of merger and their number is very small. As I have already said, Vindhya Pradesh should be merged. But I learn from the newspapers that Vindhya Pradesh is to be divided. A part of it would go to the U. P. and the rest to the C. P. As far as I can think this is not a good thing. This would create disrespect in them and at the same time restlessness may also prevail there. Hence it would be better to merge Vindhya Pradesh, of course, but such states, which are pocketed states, should be merged in U. P. and the rest of the States should be merged in C. P.

*[] Translation of Hindustani speech.

*[] Translation of Hindustani speech.

Before I conclude, Sir, my small speech, I consider it my duty to thank you I cannot also conclude my speech without offering tributes to respected Bapu. It was the result of the co-operation of all of us and it was the result of the blessings of our Bapu that we got freedom and are completing our Constitution. We hope that following his advice our country shall go on progressing and will continue to flourish.]

Shri Har Govind Pant (United Provinces : General) : *[Mr. President, I have come here to support the motion of Pandit Ambedkar. I am deliberately using this epithet 'Pandit'. Everyone knows what scholarship Dr. Ambedkar evinced in preparing the draft of the Constitution and in making a logical exposition of its provisions in this House. It can therefore be said that he is worthy of this title. Influenced by his scholarship some of the honourable members have been pleased to confer on him the title of Manu Bhagwan. We are passing through the *Vaivashwat manwantar*. A *Manwantar* consists of seventy-two four-*yug* cycles. We are passing through the twenty-eight cycle of *Vaivashwat*, the Seventh Manu. To bring in a new Manu in this chain may perhaps create a difficulty. Therefore I think that the title of *Up-manu* and not of Manu can be conferred on him. It should also be considered that in framing this Constitution eight 'Manus' have made their contribution and therefore it would not be improper to call them eight 'UP-Manus'.

I believe in the older order and according to it a *Manwantar*, *i.e.*, the time of one Manu covers a very long period. A *Manwantar* ends when seventy-two four-*yug* cycles are complete. During the period of one Creation there are fourteen Manus. *Kaliyug* alone covers four lakh, thirty-two thousand years. *Duapar* consists of eight lakh, sixty-four thousand years. *Treta* has a double number of years, *i.e.*, seventeen lakh, twenty-eight thousand years, *Satyug* runs for thirty-four lakh, fifty-six thousand years. Thus the total number of years in one cycle of four-yugs is sixty-four lakh, eight thousand. On the completion of seventy-two four-*yug* cycles, there will be only one *Manwantar*. This is the idea in India of the period of present Creation. This is the timechart handed over to us by ancient India. It is possible that this correctness may be confirmed by science as it progresses. Eternal though Time is, I do hope that the present Constitution will be long-lived. I have only to submit that this Constitution has been framed on the basis of mutual agreement. As I have said, I have come here to support the motion that is before the House at present. Therefore I do not consider it necessary to comment upon it.

As I have said, this Constitution has been prepared on the basis of agreement and we should sincerely strive for its success. According to the ancient order the primary aim of human life is the achievement of fur *Vargas*. I need not say what place has been given to *Dharma* in our Constitution. When *Dharma* itself occupies a dubious place, it is all the more unnecessary to speak of *Moksha*. As for the remaining two *vargas.*, *i.e.* *Artha* and *Kama*, they have been properly provided for in the Constitution and everyone has been granted an equal right of their achievement. Ancient India accepted that man can achieve his good in both the worlds only through *Dharma*. Shri Vyas Deva says :

मध्ववाहु विरौम्येवः नहि कश्चित् चुणोतिमाम्।
धमदिश्यश्च कामश्च स धर्मः किन्नसेव्यते ॥

(With raised arm I declare it, but no one listen to me, that *Dharma*, *Artha* and *Kama* can be achieved through *Dharma*. Why not follow it?)

The happiness of all and the interests of society can be promoted only by following the path of *Dharma*. If we foresake it and go our own way, we cannot make the nation or the individual happy. The extent to which cow-slaughter has been prohibited in the Constitution is only proper. In ancient times

*[] Translation of Hindustani speech.

[Shri Har Govind Pant]

the Brahamans had no possessions and considered it unnecessary to secure protection for themselves. They did not consider it their duty to secure safeguards for themselves. Therefore the Constitution provided for their protection. In the present Constitution safeguards have been provided for Scheduled Castes and Tribes for some time. Their protection was necessary because they cannot protect themselves. Therefore we see that there is some similarity in the old Manu Smriti and the present Smriti. The only difference is that in place of 'गो ब्राह्मण हिताय च' (For the good of the cow and the Brahaman), there is now 'गो परिगणित हिताय च' (For the good of the cow and the Scheduled Castes). Therefore the demonstrations against Manu Smriti were out of place. Anyway, I do not want to say anything more about this matter and want to only emphasise that we should extend full protection to the Constitution which has been framed with the consent of all. We have done a fine thing by including adult franchise in it. A second wealth we have received in the form of Fundamental Rights and a third in the form of abandonment of the system of separate electorates. A fourth wealth we have got in the form of Hindi which has been accepted as the National language. The achievement of these four types of wealths, we can characterise as the achievement of four *Vargas*. We have, no doubt, achieved them but we can utilise them only when we sincerely strive to carry out the decision arrived at by the consent of all. I accept that the South Indians will experience some difficulty in learning Hindi but manliness is proved only by overcoming difficulties. Therefore I wish that all the honourable Members and in fact all of my countrymen should consider it their duty to make all the decisions arrived at in this House a great success. Then alone will our country benefit. I would like to add in this connection that it is a matter of pride to us that even though our Constitution is the most voluminous of all the constitutions of the world but never was a division called for at the time of voting on any article whatsoever and no list in connection with division was prepared. I need not mention the names of those who were responsible for this unique feature of this House. I have reverence for them in my heart but if I express it its importance will go. Therefore I would not mention the name of any person in this connection.

We have a unique history of the non-violent struggle for the achievement of our country's freedom. We all know whose efforts have enabled us to witness this occasion. An unparalleled event in the history of the world occurred in this country. Whenever I entered this House I first caught sight of the picture of Mahatma Gandhi. Although this oil painting has been fixed at a particular place but his soul pervades the whole country and the hearts of all of us. All this is due to his penance alone. While looking up to that picture today it appears that it is pointing out that the country because of the greed for small profit has forgotten the Great Dandi March. I regret that we could not come to any clear decision regarding the salt-tax. But I hope that in future the nation will never need to tax salt. There are a number of complaints regarding the arrangements for securing salt from Sambar lake. If salt is taxed its prices will increase in far off places.

I have been working with the Congress since 1905. Ever since I entertained the belief that the soul of the Indian nation is awake. When I was a student I read in the papers the accounts of Khudi Ram Bose, Kanhai Lal Datt and other patriots and began to have faith in the immortality of our nation. I am confident that, when in this age too, great men like Mahatma Gandhi can be born among us, the soul of India, the soul of our nation is indeed awake and there is no ground for pessimism. Only we have to work with sincerity. If we are ready to lend our united co-operation to carry out the decision we have

arrived at, we are bound to meet success and thereby we shall enhance the prestige of India much more than what it was in ancient times. Just now it was being said that propaganda should be made among the people to explain to them the implications of some special provisions of the Constitution. I would like to say that those who desire to work in this connection have already started the work. I have also done a little work in this direction. I am confronted with one difficulty in this matter. I belong to the Himalaya region which abounds in beautiful sites and sacred places. The people of other areas very seldom go there. For purposes of pilgrimage also very few people go there and the inhabitants of my area have very little contact with other people. Therefore the country has not been able to understand the importance of my area from the national point of view. Therefore, it is solely our responsibility that we should awaken our people to their duties towards their country. I want to assure you that in spite of the difficulties peculiar to my area we are doing our duty and will continue to do so. You might have learnt from press reports that the Imperialists of China have begun to look greedily at Tibet. Our area is adjacent to Tibet. It is possible that very soon an occasion may arise when we might have to do our duty by our country and when we might be able to show that we are ready to serve our country with our blood and with our money. In the end I would only say that I am fortunate in having got at this age an opportunity of participating in the framing of the Constitution. I thank you for kindly giving me the opportunity of saying a few words. I hope immortal India will ever remain immortal and will do great deeds to promote the welfare of the world.]

Shri Sarangdhar Das (Orissa States) : Mr. President, Sir, I cannot completely agree with this Constitution because it is not a revolutionary document. The social and economic structure of the country as it is now is to remain. Nevertheless, there are certain glaring defects which I wish to point out, particularly in the Fundamental Rights. Although certain very essential rights have been conceded, in a later article *viz* article 22—preventive detention clause—some of these have been taken away; and so it is not proper to say that Fundamental Rights have been fully conceded.

Then I have to mention the clause with regard to acquisition of property. The compensation that is to be paid for the acquisition of property is framed on the basis of the present structure, and it is wrong for us to say that by this Constitution we are introducing an era of plenty and prosperity for the people. It is my view that the natural resources of the country and the means of production are the property of the community. There is nothing radical about it, when you consider that in many countries, especially in the U.S. where they had “sanctity of property” in the beginning. But, during the 19th and early 20th Century that changed. And I believe our Constitution should have taken the lesson from that and declared that the natural resources of the country and the means of production and distribution are the property of the community, and as far as paying compensation for such property is concerned, in as much as the holders or the trustees of these properties have enjoyed the benefits there-from for hundreds of years and have gained profits from it. I do not see why there should be any compensation paid to them now. I do not want to go into the details but that is a point that should have been taken into consideration. I know there was some opposition to the compensation clause but by sheer majority it was passed.

Again I am reminded of the speeches of several of the honourable Members who have talked about Gandhiji’s plan of democracy. They have regretted that nothing of Gandhiji’s principles have been incorporated into the Constitution. I for one do not wish dwell on that point, but, we talk in one breath of forming a society in which there would be neither high nor low people. That is to say, their incomes would be as far as possible equal and

[Shri Sarangdhar Das]

yet in the Constitution itself we have incorporated those abnormally high salaries for high official beginning from the President downwards. While the pay of the Government servants in the lowest grade is 30/- a month, to give the President Rs. 10,000 a month is absolutely absurd. In this respect as far as I knew when I was in the U.S., I remember this that even 25 years ago the difference between the low-paid servant and the highest-paid in certain localities was not so much as in this case. If we continue to look at the services of highly-placed people in this manner, I do not see how we can say that we are introducing a Constitution which would result in bringing forward a society where everyone will be equal both socially and economically.

Then I wish to say something about the national language. The article as it has been passed and on which this morning Mr. Thanu Pillai spoke, I am in full agreement with him except that he has missed a very big point which unfortunately he cannot distinguish *viz.*, Mahatma Gandhi's original ideas as well as of those who know the ways of the world *re.* language was the Hindustani should be the national language. The article as it has been framed no doubt implies that it will be Hindustani but it is wrong to call it 'Hindi'. I believe because Hindi had been advocated by certain Members of two or three provinces who always talk about introducing original Sanskrit words, that it has evoked a lot of opposition in South India, in Bengal and I believe in parts of Bombay province. Hindustani is really the language that the people speak and also in non-Hindustani speaking provinces *e.g.*, in Orissa although we do not speak Hindustani, we can understand a person speaking Hindustani better than one who speaks pure Hindi. Because pure Hindi as advocated by our U.P. and C.P. friends has a lot of Sanskrit words which are unintelligible to the ordinary mass of people, as they are not learned in Sanskrit. If the framers of the Constitution have yielded to the pressure of these orthodox Hindi friends of ours, I think it has been a great mistake. After the language article was passed, I have had the chance to travel in South India, and also in Bengal and I have found a good deal of opposition which has no basis at all except that the people in those parts think North India is imposing this language on them, and they rightly resent such imposition. Consequently when the time comes to implement this article, the Government of the day should see to it that such a language as Hindustani is introduced as is being introduced by the Hindustani Prachar Sabha in many parts of the country and then when Hindustani will be accepted by the people all over India, I believe all this misapprehension will go within a few years.

With regard to the States, some of my friends, also from the States areas have supported that article which provides for the tutelage of State Unions or of individual States like Mysore or the Travancore-Cochin Union for ten years, I had opposed it while the article was under consideration. I disagree with those friends. No matter how backward some of these States may be, I think it is wrong to take away democratic rights from the people and their representatives and spoon-feed them. So that is a very reactionary measure after the States—some six hundred and odd of them—had been immolated. It is a reactionary measure to bring certain parts of those areas under Central control for ten years. And then again, I wish to say in this connection that although the States have gone, and although we say that the rulers have gone, I do not believe that they have gone. They have their privy purses and other emoluments. In as much as they are set down in the Constitution, they remain for good. That is really a gain for the rulers because now they do not have the burden of responsibility for administering their areas. Still they enjoy these privy purses which are again rather unnatural, because they have been based on the wartime inflated incomes. So my contention is that the rulers remain in our society in another form, not as rulers with powers to govern their areas, but as a new type of vested interests which is not desirable and which is not conducive to the kind of society that the Constitution claims to introduce.

It is also objectionable that too many powers have been vested in the Centre I remember, in 1947 when the principles of the Constitution were decided, at that time, the Centre was not to have so many powers. I do realise that after partition of the country, the situation has changed; nevertheless, the giving of so many powers to the Centre, the power to nominate this official and that official, the Governors and so forth will afford the opportunity to the party is power to perpetuate itself. Further, with regard to the nomination of Governors for the Provinces, I am afraid, if any party other than the present ruling party comes into power in certain provinces, and a Governor of the party in power is nominated for such province, there will be clashes between the Government and the Governor, *i.e.*, between the ministry and the Governor, and that will not be conducive to smooth working. From this point of view, I believe the concentration of too many powers in the Centre will gradually result in the introduction of a sort of dictatorship of a single party.

There is also another objectionable feature that I wish to mention, which goes against the principles of democracy, and that is, that in the council of States, certain number of members will be nominated by the President, and out of them one or more may be taken in as Ministers in the Central Cabinet. On the one side, we speak about democracy and on the other side we take recourse to measures which go against the principles of democracy.

Just at present within the short time allotted to me, I can think of these defects which I have detailed. But at the same time, I must speak of the good points also in the Constitution.

I disagree with most of my friends, particularly the Hindu friends who expatiate on the existence of the republican system of government, *i.e.*, republics in our old Hindu polity. I disagree with them. My contention is that our lower classes, the lower castes of our society, whom we call harijans, have all along been kept in a depressed condition. Consequently, there was no democracy. If there was democracy, If there was a republic, it was amongst the higher classes, what we call the higher castes. If you look at the Constitution from that point of view. I think the removal of untouchability and the introduction of adult franchise are two of the very best elements that have been introduced in this Constitution. I may remind you, Sir, that in the American Constitution, the franchise was given only to free, white citizens, because in those days, there were also white people who were slaves, working as slaves in the West Indies and the Cribbean Islands. They were debarred from the franchise. The back people, the Negroes, were nowhere. They were denied the vote. They came only in the time of Abraham Lincoln, when they were enfranchised. So, I say, in our Constitution, the conceding of adult franchise, of equality of women and of the removal of untouchability, these three things are the best in the Constitution.

There is also another good point in it, and that is the setting up of the secular State. There is no doubt everything has been done to make the State secular, although quite a number of criticisms have been made of it, on the basis that it is not Indian, meaning that it is not based on the Hindu religion. In that connection I would say that no religious instruction whether Hindu or Christian or Islam, should be given in any school. There is such provision in some of the clauses that in certain circumstances religious instruction is permissible, I think that should go.

Although I have pointed out a few of the very great defects, in as much as adult franchise has been conceded by this Constitution, I have no doubt, that the mass of people who will exercise the franchise in the future, can change the entire Constitution, if they so desire, and they *will desire*. So I do not condemn, no disapprove, of the Constitution, as some of my friends have said that nobody has condemned it. It is no use condemning it. When adult franchise is there, by exercising that right, we can change the Constitution according to the needs of our society in future.

[Shri Saranghar Das]

With these few words, Sir, I also thank the Drafting Committee, and you Mr. President, for all the labour that you have put into this and for doing everything to satisfy all sections of this House.

Shrimati Ammu Swaminathan (Madras : General) : Sir, the passing of this Constitution for an Independent India can be called without exaggeration the realisation of a great dream of four hundred million people. For so many years the people of this country had been working for this realisation and today we have actually got what we had been working for.

The first picture which really comes into my mind when I stand here this afternoon is the picture of the great man, Mahatma Gandhi, who by years and years of untiring work made it possible for us today to be an independent country. I think if we are to deserve this Constitution we have to make up our minds to work it, into something alive and something that will be of benefit to every citizen of this country. I know that the Constitution gives us in fundamental Rights, equal status, adult franchise and has also provided for the removal of untouchability and things of that kind for which India had been fighting all these years. But all these things appearing on paper is not enough if we are to make this country happy and prosperous. We have to see that these ideas and ideals which are on paper in the Constitution are implemented by the people of this country.

Sir, I would also like to pay my tribute to you and join with other Members who had congratulated you and shown their gratitude to you. All Members of this Assembly will always remember you with great affection and esteem and we will always remember the kindness and consideration you have shown towards every Member of this House.

We have also to pay our tribute to Dr. Ambedkar and the members of the Drafting Committee and the Secretariat of the Constituent Assembly for the very hard work that they had put in for so many weeks and months. I know their task has not been an easy one but they have overcome all difficulties and thus we are today on the eve of passing this great Constitution of our country.

I feel that the Constitution actually rests on two pillars—Fundamental Rights and the Directive Principles of State Policy. The fundamental rights of the people of India are guaranteed in such matters as freedom of speech, association and worship. The last is a very vital question to the people of this country. The Hindus have always been known to be tolerant towards all religions and we have put that down in our Constitution so that there will be no mistake about it and nobody can say that our Constitution did not include freedom of worship to every citizen of this country.

Now it is for us to see that this Constitution is worked properly so as to bring about the democratic State in India for which we had been working and hoping for and when we bring this about we must see that not only the rights are assured to every citizen but that he knows his duties and responsibilities towards the State. His freedom should be so used as to be of benefit to this country. Freedom is not to be used for doing anything that anyone likes. As it is so often said, freedom does not mean license. Let us hope that in the years to come this Constitution will be considered as something worthy of our country. Though there are many who find fault with a great number of clauses in it I hope they will remember that when we were going on with this work of constitution-making India was passing through difficult times, very unhappy times and our task was a very difficult one. I feel that it has been a great achievement to have been able to bring all the divergent opinions together and frame a Constitution of this kind which has been agreed to by a very large majority, though perhaps not by all.

A great many members of this House have been praising this Constitution and there has been a certain amount of criticism also. There is one criticism which I would like to make and that is that this Constitution is to my mind a very long and a very bulky volume. I always imagined a constitution and still believe, to be a small volume which one could carry in ones purse or pocket and not a huge big volume. There was no necessity to go into so many details as has been done here. All the details, I think, should have been left to the Government and the legislatures. After all they are going to function according to the policy laid down by the Constitution and was it necessary, I would ask, to load the Constitution with all this? I know very little about constitution-making, not do I pretend to be an expert. But I do feel as one of the citizens of India and as one of those who have been a member of a legislature for two or three years that it was not necessary to have so much details in the Constitution. However, as it is a I do think that it is a great piece of work and I would like to say that it has been a great joy and happiness to me to have been here as a Member of this Assembly when framing the constitution of India and I hope that some of us will live to see that the Constitution becomes a real stronghold for human rights and it will be worked towards establishing a real democracy, so that there will be happiness and property for every one in India.

Equal rights is a great thing and it is only fitting that it has been included in the Constitution. People outside have been saying that India did not give equal rights to her women. Now we can say that when the Indian people themselves framed their Constitution they have given rights to women equal with every other citizen of the country. That in itself is a great achievement and it is going to help our women not only to realise their responsibilities but to come forward and fully shoulder their responsibilities to make India a great country that she had been.

With these few words, Sir, I strongly support that the Constitution may be passed.

Shri L. S. Bhatkar (C. P. & Berar : General) : *[Mr. President, I congratulate Dr. Ambedkar and other members of the Drafting Committee for preparing this Draft Constitution with so much labour and industry after our country had achieved its freedom. But many shortcomings still remain in it. The rights granted to the people under article 19 of the Fundamental Rights are a farce, because whatever has been given under that article has been taken away by the proviso of that article. Article 17 provides for the abolition of untouchability for which I congratulate the Drafting Committee. Every Province has passed legislation for the abolition of untouchability, but that is only on paper, it is not followed anywhere. Only a few people are trying to eradicate untouchability which has entered. if I may say so, the blood and bones of caste Hindus on account of its existence for thousands of years. But before any law can be of any help, the caste Hindus should effect a change of heart. Untouchability can be abolished only in this way. It is your responsibility to study the lesson taught by the Father of the Nation, Mahatma Gandhi in this respect and to come out successful in the test.

Again in the Constitution that has been passed not much importance has been given to the peasants and the workers. The provisions of this Constitution reveal that behind them was a great eagerness to provide for high salaries to the Government officials, and not the least thought seems to have been given to the peasants and the workers who labour with the sweat of their brow to take the nation on the road to progress and prosperity, and who had given their blood in profession for the sake of achieving Independence for this country. This is a being adopted for the protection of the rich. The Zamindars have robbed the peasants of thousands of bighas of their land by various methods. No

*[] Translation of Hindustani speech.

[Shri L.S. Bhatkar]

attempt has been made anywhere in this Constitution to restore the land of peasants back to them. The nation cannot progress until industries have been nationalised. Provinces are enacting laws to abolish Zamindari while the land of the peasants is being looted by other methods. That land has now to be acquired by the peasants on payments. This means that the Zamindars are being strengthened more and more. This Constitution should have provided that the peasants would get the land *gratis*. Mahatmaji told us that this nation can be deemed to be free only when freedom is found to be beneficial to the peasants and workers. This Constitution does not seem to contain anything beneficial for them. An attempt has been made in this Constitution for the protection of the minorities. Article 338 refers to justice for the Scheduled Castes. Mr. President, I wish to tell you that the position of Harijans in the services hitherto is as follows:

C. P. & Berar

Caste	Population (1931 Census)	Gazetted posts
1	2	3
Brahmans	5,42,566	448
Marathas & other	18,82,654	17
Scheduled Castes	30,51,413	3
Muslims	783,697	99
Sikhs	14,996	13
		580

Honourable Shri B. G. Kher gave the following figures in reply to a question in the Bombay Legislative Assembly by Shri R. M. Nalwade:—

Community	Population in 1931	No. of Gazetted officers	No. of non-Gazetted officers <i>i.e.</i> clerks
(1)	(2)	(3)	(4)
Depressed classes	18,55,148	14	8,201
marathas & others	42,07,159	606	43,360
Brahamans	9,18,120	1,370	21,448
Muslims	19,20,368	201	13,797
Others . . . . .	...	886	18,658

This demonstrates clearly the necessity of making some provision assuring that such injustice will not continue any more, and there would be speedy action to end it. I request the Government of India and the provincial Governments to apply article 338 for our welfare and recruit Harijans in the services according to their population.

Secondly, this Assembly should contain 60 Harijan Members on the basis of our population, but today we are only 27. I hope, Mr. President, you will make up our quota by filling the casual vacancies in the light of this suggestion.]

Shri Ram Chandra Upadhyaya (United State of Rajasthan) : *[Mr. President, Sir, while speaking on the Constitution today we should keep in mind what our country thought about its future three years back and what hopes it entertained regarding its constitution. I remember it well that when the interim government was functioning here the people of the States were behind the bars and all their efforts were directed towards the achievement of responsible government. Two years back we entertained the hope that we would get responsible government and that we would frame separate constitution for the States. Time is passing very swiftly and perhaps we are not able to keep pace with it. Even within the short time of two years so many separate States united together and formed into Unions. What we could not even think of an year ago, we have achieved already. I remember that one year back during the session of Matsya Congress Committee a resolution was moved to the effect that a constituent Assembly should be formed for the Matsya Union which should frame a constitution of its own. I was present there at the time and I said that it was a reactionary step because when a constitution was being framed for the whole country, it was not proper to demand separate constitutions for different Unions. Everything has been made possible even within an year. If we take into consideration that a Constitution has been framed for the whole country and that too speedily, we can well be proud of our achievement. We see that our neighbouring country, Pakistan, which was previously a part of our country, is far behind us in framing a Constitution. Not only that it has not yet been able to frame a constitution for itself but it has not been able to solve the problem of its four or five States too. It has not been able to integrate them properly so far. When we look at that country and also take into consideration the period of two years, we can well take great pride in what we have achieved. Many people in India blame us for having taken too much time in framing the Constitution. No doubt we took some time but in view of the difficulties with which we were confronted, we did not take much time. If we had finished our labours six months back, we would not have been able to produce the Constitution that we have framed today. I feel that it would have been better if we had taken six months in the final reading of the Constitution. In the meanwhile we could have prepared and got printed the lists of voters and determined the constituencies. We should have done so. I think that if we had finished our labours six months hence, our Constitution would have been more complete than what it is. However, I am pleased to note that there is provision in the Constitution to make changes in its whenever such necessity arises. I think it is not very proper for us to speak of the merits or demerits of the Constitution because it has been framed by us. We took stock of the whole situation and produced the best thing we could. It can be left for the future generations and for the historians to judge whether we arrived at a correct decision in the atmosphere and situation we were placed in.

A number of people are saying that we have provided many things in this Constitution which are against democratic principles and that we have nullified the right of citizenship. I would ask you not to look at this Constitution from the point of view that the Constitutions of America and other western countries are far more advanced than ours. If the country judges it from that point of view it would not be doing justice to us. The people should ask themselves whether they have the same love for their country, for democracy and for the rights and duties as the people of those countries have for theirs. The answer is in the negative. Then why should we make a comparison today with those countries? When our freedom and democracy will be firmly

*[] Translation of Hindustani speech.

[Shri Ram Chandra Upadhyaya]

rooted we will be able to make whatever changes we like in our Constitution and to go ahead with it and then alone will it be proper for us to compare our Constitution with those of other countries.

We should see that it is after remaining in bondage for thousands of years that we have achieved freedom. Just now the people have not even learnt to love their country and their nation. The conditions obtaining in the country at present are so bad that we begin to doubt whether we would be able to maintain our freedom and our democracy by even following the Constitution. We see that the Rajas still retain their old position. I know that Sardar Patel and our Government have put an end to the States. But we should not be under a delusion and shut our eyes to realities. The truth is that although the States have been finished but the Rajas are still there. With the fall of the States the Rajas have not fallen. They have great power and wealth. They still dream that they would have their way when the Central Government weakens. We have not forgotten that an year and half back our Maharajas dream that as they were very near to Delhi, they would, getting an opportunity, fly aloft their flag on the Red Fort. They had purchased aeroplanes for the purpose and had kept their army in readiness. They have an eye on Delhi and are waiting for an opportunity. There are others also for whom their community is their country. They want that their community should come into power whether the country lives or perishes. The Rajputs want that they should take over the reins of administration of India. Some dream of a Jat Raj. Some want to establish an Ahir Raj. Such are the ideas of some people about their future. I ask whether these ideas are not dangerous for our country? Moreover there are some people who want to serve their ends by bringing about anarchy in the country. Some dream of a Maharashtrian Kingdom and some of something else. We should take into consideration these factors which threaten the security of our country and then take up the task of examining this Constitution. There is no doubt that if we had been placed in a better position, we would have incorporated in it better things. It is not that we have not love for freedom and citizenship. We also want that no person should be imprisoned until he is proved guilty of a crime against law and that every person should enjoy full liberty. In view of the present situation the rights that have been provided are adequate. In view of the present situation the Constitution should be considered as an arrangement for ten years. If we are able to retain our freedom for ten years, which I am sure we would be able to do, and the roots of our democracy are strengthened, we would be able to make changes in it and to make it progressive. Then alone would it be proper to strike a comparison.

Considering the present situation I find two or three redeeming features in the Constitution which can be characterised as healthy seeds of democracy. Getting good ground and atmosphere these seeds will give forth good sprouts and the sprouts will grow into trees. The Parliament will be formed on the basis of adult franchise and will enjoy full power. We shall thereby be able to protect our democracy and shall have no fear in regard to our future. Besides, people are raising a hue and cry in the name of religion. They quote scriptures and mislead the people. Pakistan was established on the basis of religion and on that basis it has driven out the Hindus and non-Muslims with the result that the people have begun to blame the Congressmen. At such a time we have shown courage in establishing a secular State and faced all sorts of comments. Even today propaganda is being made against us and the Congress in the name of religion and we have to face a lot of criticism. We have given equal rights of citizenship to all. We have given equal rights to

women although Britain and America were able to grant such rights at a very late stage. We have given full freedom for propagating religion. We can well be proud of these things.

We have indeed taken a great step in regard to States. Even the foreigners wonder at our achievement. No doubt I feel that we could have done a few things in a better way. I admit that the people of the States are a little backward in comparison to the people of the Provinces but to lay down the condition for them that for ten years they would be under the control of the Centre smacks of a little high handedness. This will make it difficult and is already making it difficult to pave the way for democracy. We feel that we are going to have a dual Government. The Civil Service men of the Centre carry on the administration according to their views and our Ministers according to their own views. The result is terrible. They try to blame each other with the result that the administration deteriorates considerably. Honourable Sardar Patel assured us that this arrangement will be conformed when it will be absolutely necessary and that is why we accepted this provision. But such an arrangement should be rarely put in practice and if possible it should not be used at all. The country will benefit by it.

Secondly, we have vested too many powers and special powers in the Centre. The provinces have been rendered powerless. This is a great defect. It would mean a set-back to our democracy. The exigencies of the times necessitated such a provision and we accepted it. But I hope that the Central Government will make as little use of its special powers as it is possible for it because that would advance the cause of our democracy.

In conclusion I would like to say that an injustice has been done to my area taking shelter under this constitution. I feel that I should say something in regard to this matter. Sirohi has been arbitrarily divided and one part of it has been integrated with the province of Bombay. It is unjust to take this step without consulting the people. It would be dangerous to carry on democratic administration in such a way. Sirohi is an insignificant area and its division does not mean that Rajasthan is going to perish but the question is one of sentiment and the method of action. To divide it without consulting the people is improper. It could have been integrated with Gujarat or Rajasthan for the time being. It would not have made any difference. After two or four years the people could have been consulted and it could have been accordingly integrated with any area whatsoever. Efforts should be made to make amends for this as early as possible. By going against the wishes of the people, democracy gets a set-back and the people get discontented.

In the end I would like to say that at least for some time to come our Constitution will prove to be very good and if we continue to march forward on the path shown by it we will safeguard our freedom and democracy and make our country great in a very short time. Therefore we should accept it.]*

Shri Ram Chandra Gupta (United Provinces : General) : Sir, I am very thankful to you for giving me this opportunity of speaking for a few minutes on this motion.

The present Constitution will go down, in the annals of this nation, as a great "CHARTER OF FREEDOM", which our people have today achieved after a long and ceaseless struggle and much suffering. We have therefore every reason to be proud of it; and I have no manner of doubt posterity will continue to remember January 26th, 1950 as the sacred day when real freedom dawned in this country.

[Shri Ram Chandra Gupta]

This Constitution which consists of nearly 400 clauses is the result of 3 year long hard labour, anxious thought, and much compromise. The country will no doubt feel grateful to all those who have had a hand in the shaping of this Constitution. Our thanks are due to all members of the Drafting Committee—particularly to Dr. Ambedkar, and to you, Sir. Both of you have demonstrated how accommodating you can be to others.

The Constitution as it stands today, is the result of heated discussion and long debates carried over thousands amendments moved by the honourable Members of this House. In fact there is not a single word in the Constitution which has not received the notice of some Member or the other. I can go to the length of stating that even punctuations, *viz.*, common, semicolon, and full stops, have received due notice from our vigilant friend, Mr. Naziruddin Ahmad. It is true that unanimity could not be achieved on every matter, but there is no doubt that all clauses passed by the House always had the support of a very large majority. Almost all the important controversial questions were postponed many times for fuller consideration and the achievement of unanimity, if possible.

In one word, I can say that the present Constitution is the result of many happy compromises effected as a consequence of the spirit of 'give and take' so liberally manifested by the Members of this House. In such circumstances you cannot expect that all the Members will have the same degree of satisfaction on all matters incorporated in the Constitution. This really explains the mixed reaction accorded to the Constitution by the various speakers. While I myself do not agree with every thing incorporated in the Constitution, I can say without the slightest fear of contradiction, that it has the substantial support of a very substantial section of the House.

It is no doubt true that the Constitution as originally drafted has undergone a radical change. Such a change was inevitable under the altered conditions of the country. When we began in December, 1946, the country was not divided and the then conditions did require a Constitution of a different type. By the partition of the country very many questions which were then important lost all significance. Prior to the partition of the country it was thought that all the provinces should be practically independent of the Centre except in certain matters—defence, communication etc.:—the residuary powers to vest in the units; but the partition did demand, and rightly demanded that the Centre should be made as strong as possible. The Constitution has effected this change, and I believe that this change is for the better. I am not satisfied by the criticism that there should have been less of centralisation, and more of decentralisation. I may perhaps agree to this criticism only in a small measure and not more. *A strong Central Government is the need of the hour*; and I prophesy that the future will tell you that this centralisation was a blessing. All along the ages, and our history bears ample testimony to this fact, the overmastering problem before India has been one of integration, and consolidation and unification. A unitary and highly centralised form of Government is suited to the needs of this country. However, in future if our experience shows that in certain matters some more powers should be given to the units, I feel there would be no difficulty in getting the change effected by the amendment of the Constitution as provided for in Sec. 368.

The other material change effected in the Constitution was due to the regrouping and consolidation of the 600 and odd princely States. Can any body say that this change has not been for the better? For effecting this merger all credit goes to our beloved Deputy Prime Minister, Sardar Patel, who performed this miracle in such a short time. The ruling chiefs of those

States who voluntarily abdicated their authority in the interest of their motherland also deserve our sincere thanks.

We can now feel proud that ours is one country, one language, and one Constitution, to govern all—low or high, Scheduled Castes or high castes, minorities or majorities. Our Constitution does not make any distinction whatsoever. In fact it has removed all traces of untouchability from the country. The Constitution has been hailed by all the members of the Scheduled Castes in this House, and we can safely say that it is quite satisfactory from their point of view. The Constitution has, as a precautionary measure, given special rights to the Scheduled Castes, Anglo-Indians for a short time only.

The Constitution has placed women on absolute equal footing with the menfolk; and we can say that ours is the only Constitution giving these rights to women without any reserve or restrictions.

Another criticism levelled against this Constitution is that it is too lengthy. This also seems to be unjustified. Ours is a peculiar country where you have to provide for so many contingencies and conflicting interests. It is but natural, therefore, that the Constitution should be a detailed one. This codification of numerous details, which are likely to arise every day, must occupy considerable space in any constitution. Besides this, we have benefited by the comparative study of our own old Acts, including the Government of India Act of 1935. We have also utilised the good points of the American, British, Australian, and other Constitutions and at the same time tried to save ourselves from many pitfalls of other Constitutions. Some honourable Members have termed it as a "Patch-work". This is not so. Our Constitution really consists of all that is best in other Constitutions, modified to suit our peculiar needs.

Another good feature of the Constitution is that it has done away with the system of separate electorate and reservation of seats (except for a short duration in some cases).

This Constitution, for the first time, has provided for appeal against sentence of death to the Supreme Court under certain circumstances. It does not go far enough in so far as it fails to provide appeals in all cases where death penalty is imposed or confirmed by a High Court. I would have, however, preferred total abolition of death sentences.

The question of Zamindari abolition has been agitating the country for a long time. The payment of compensation at the market rate was beyond the means of the units concerned. This Constitution, while awarding equitable compensation, has provided in article 31 that the compensation shall be determined in accordance with certain principles. This enactment has made it possible to abolish the Zamindari system, root and branch.

Article 21 of the Constitution relating to protection of life and personal liberty of an individual is a clause which has attracted the attention of a large section of the public, specially lawyers and judges. Their contention is that the clause as enacted, will not safeguard the rights of the individual sufficiently. Their fear is unjustified because no Government in the country can pass only legislation and then enforce it in a wanton or irresponsible manner. Sanction of the legislature is essential under the clause. There is no doubt the clause is wide enough to confer very wide powers on the legislatures of the country and I am sure that a resort to such extraordinary powers would be had only when the exigencies of the time would require them.

[Shri Ram Chandra Gupta]

In the end, I shall request the Members of this House, and through them my countrymen outside this House, to work this Constitution in the spirit of devotees. If we work this Constitution and co-operate with each other, even the seemingly glaring shortcomings of this Constitution, which appear so great today, will gradually peter out. Let us swear by this Constitution and pledge ourselves "to protect, preserve and defend" this Constitution—no matter what the price we may have to pay in so doing.

Mr. President : The House now stands adjourned till ten o'clock tomorrow morning.

The assembly then adjourned till Ten of the Clock on Friday, the 25th November, 1949.

CONSTITUENT ASSEMBLY OF INDIA

Friday, the 25th November, 1949

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.

GOVERNMENT OF INDIA ACT (AMENDMENT) BILL

Mr. President : The first thing today is to take up the Bill of which notice has been given by Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Sir, I move for leave to introduce a Bill further to amend the government of India Act, 1935.

Mr. President : The question is:

“That leave be given to introduce a Bill further to amend the Government of India Act, 1935.”

The motion was adopted.

The Honourable Dr. B. R. Ambedkar : Sir, I introduce the Bill.

Mr. President : The Bill is introduced.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

“That the Bill further to amend the Government of India Act, 1935, be taken into consideration by the Assembly at once.”

Mr. President : Motion moved:

“That the Bill further to amend the Government of India Act, 1935, be taken into consideration by the Assembly at once.”

Shri Lokanath Misra (Orissa: General): Sir, I welcome this amending Bill but I wish to make a few observations.

The statement of objects and reasons says that on demand from certain Provinces to alter their names, this Bill has come before the House. I beg to submit that instead of changing the names of certain Provinces, the Government or the Governor General should take steps to change the names of all the Provinces as far as possible to fit in with our name Bharatvarsha. For instance, I have got a call from my own Province that the name may be changed from Orissa to Utkal. There are various cogent grounds for changing that name. Our University is called the Utkal University. You know, Sir, the Congress calls it the Utkal Province. Then again, our revered Rabindranath Tagore in his Jana Gana Mana also describes our Province as Utkal. Utkal is an ennobling word. It means high art and high apprehension. I therefore, submit, if my words could reach the Governor General, steps should be taken to change the name of my Province Orissa to Utkal.

Shri R. K. Sidhwa (C.P. & Berar: General): Mr. President, unfortunately, this Bill has been brought in this session for want of time. This subject really speaking, relates to this Constituent Assembly and it should have been brought earlier. But, it is neither your fault, Sir, nor the fault of the Drafting Committee nor the fault of the House, because we are working against time.

[Shri R. K. Sidhwa]

Therefore, the second best method is sought to be adopted by the Drafting Committee. Therefore, certainly I do not find fault with them.

However, I feel, Sir, that the matter of changing names of the Provinces is such an important matter that I do not desire that only the provincial Governments or even the Congress Committees should decide amongst themselves and send it to the Governor General, and the Governor General should ditto it. We have a little sad experience here. We desired in the last session when we dispersed that this subject being of very great importance, if the Provincial Congress Committees and Provincial Governments come to a decision, this House will take a favourable consideration. But what has happened? The U.P. Government and U.P. Assembly decided that the name should be changed into Aryavarta. That was seriously objected to by this House on the ground that Aryavarta relates to the whole of India. The U.P. friends are always very anxious to monopolise to themselves the name of India and therefore it was by an overwhelming majority of this House that the motion of my Friend Mr. Shibban Lal Saksena was rejected and that is on record in this House. In the year 1938 when the Indian National Congress held its session in Cawnpore in the All-India Congress Committee my friends from U.P. brought a resolution that the name of the U.P. Congress Committee should be changed into Hindustan Congress Committee. The A.I.C.C. rejected it My friends being so enthusiastic brought it in the Open Congress and I had to oppose it and the Congress threw it out. It was in 1938 under the Presidentship of Pandit Jawaharlal Nehru and I was the person who strongly opposed it in the open Congress and I was glad that the Open Congress seeing the force of the argument stated that U.P. cannot usurp to themselves the name of Hindustan and it was rejected. My fear is therefore again after Aryavarta has been rejected they may suggest Hindustan. As the previous speaker stated, Orissa should be called Utkal just as C. P. has been called Madhya Pradesh. Why not U.P. be called Samyukt Pradesh ? If that is not acceptable there are other very fine names like Avadh, Ayodhya, Ganga, etc. Why should they usurp the name of the whole of India and tell us they are the people who are the only custodians of India ? I strongly resent their monopolising the name of India. Therefore I feel that it is very risky to give the power to the Governor-General. I have an amendment to that effect and when the time comes. I shall move that. Therefore while I give my qualified support to this, I do desire that this power should not be entrusted to the Governor-General as it is the right of this House and if this House has no time to decide this, then Parliament should ultimately decide not the Governor-General.

Shri Mohan Lal Gautam (United Provinces : General) : Mr. President, I am not one of those who enter into these controversies which are in my opinion very small if not petty. People always choose their names and if their names are changed, they will create a row in this House. If the name of our Province U.P. was changed two years back when we achieved independence, I assure you that this House would not have come in the way and it would have been swallowed by all of us.

Honourable Members : Question.

Shri Mohan Lal Gautam : You may question me. You may call it Utkal or Kerala or Malabar or Kannada—nobody bothers about it but when this question came up here, people are raising these objections. My friend Mr. Sidhwa said that U.P. is always in the habit of monopolising the name of the whole of India. I assure you that U.P. has a gift and it is perhaps the only province in the country which can claim that it has no provincialism.

Honourable Members : Question.

Shri Mohan Lal Gautam : You may question but I give you a challenge here and now that in all the Provinces you are so provincial.

Honourable Members : No.

Shri Mohan Lal Gautam : That you will not tolerate other people. I give a challenge to all the other provinces to give me examples where you have elected people who do not belong to your province to the Constituent Assembly. I give you a challenge where you can quote me since 1919 how many Ministers you have taken into your Ministries who did not belong to your province.

Mr. President : I would request the honourable Member not to go into matters which are not strictly germane to the motion under discussion. It is a simple proposition which is before the House and he should confine his remarks to that.

Shri Mohan Lal Gautam : I bow to your ruling but I assure you that U.P. does not want any name that you object to. This function of Brahmins—of giving names ought to have some background. You say why not give it the name of Avadh. Avadh is one of the very important parts of U.P. but it is only a part. Avadh has a tradition of Nawabs and feudal lords which we do not want.

Mr. President : Let us not discuss the names because the names are before the House.

Shri Deshbandhu Gupta (Delhi) : U.P. is also part of Aryavarta and not the whole.

Shri Mohan Lal Gautam : I am conscious of it that U.P. is only a part of Aryavarta.

Mr. President : I think you had better confine yourself to the provisions of the Bill.

Shri Mohan Lal Gautam : The justification of this Bill is that it is not very easy for this House without knowing the history of the Province, without understanding them, it is not possible for one or two Members to stand up and propose the names. Another difficulty arises that if you had given any name to this Province yourself we might have accepted it or we might have tolerated it, but you referred the matter to the provincial Government and the Provincial Government consulted the Provincial Congress Committee and in consultation they suggested some name which is not acceptable to you. (*interruption*) I am not prepared to answer any question of Mr. Sidhwa because, the Chair has ruled that the names are not to be discussed—so Mr. Sidhwa need not take the trouble of suggesting some names here and now without understanding the implication of those names. Therefore the difficulty is that the name that was suggested is not acceptable to this House and no new name can be suggested on the spur of the moment. Therefore I am grateful to—the Drafting Committee and the President of the Drafting Committee—Dr. Ambedkar—to find a *via media* in suggesting this amendment to the—Government of India Act, 1935. This will solve the difficulty. The solution is that the Provinces must be consulted and it must be acceptable to all-India authority and the all-India authority is the President and the President means the President and the Cabinet. Cabinet means if the Cabinet is responsible to the Party in power, they can consult you therefore the power really is transferred from this House to the Congress Party in the Parliament. If you do not want it, you may suggest some *via media* but to reject it would be something absolutely different. Therefore I am thankful to the Drafting Committee and I wholeheartedly support this amendment, because it is a *via media* and I would request Members of the House not to insist on their opposition.

Mr. President : Do you want to speak, Mr. Pataskar ?

Shri H. V. Pataskar (Bombay: General) : No, I do not want to oppose the motion, but would like to offer some remarks.

Mr. President : You can do so when we take up the clauses. Well, I then put this motion.

The question is:

“That the Bill further to amend the Government of India Act, 1935, be taken into consideration by the Assembly at once.”

The motion was adopted.

Mr. President : Then we take up the clauses of the Bill.

Clause 1; there is one amendment by Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, I beg to move:

“That in sub-clause (1) of clause 1, for the words ‘Fourth Amendment’ the words ‘Third Amendment’ be substituted.”

Mr. President : Or, alternatively ?

Mr. Naziruddin Ahmad : No, Sir, I do not wish to move the alternative amendment.

Sir, I wish to point out what seems to be a glaring anomaly. We have already passed four Acts in this Constituent Assembly relating to the amendment of the Government of India Act. Though we have passed four Acts, yet the numbering is absolutely erratic. We have Act No. I. Then we have Act No. II. Then we have Act No. III and then, by a big jump we have Act No. V, but it seems there is no Act No. IV. Sir, the usual or rather the accepted way of numbering Acts is serial. After Act III, we must have Act IV, and not Act No. V. There is thus, a gap in Act No. IV. I do not know whether this is the fact, but this is what I have understood as having happened here. So far as the amendments are concerned, of the four amendments, the first is called the Government of India Amendment Act, 1949. The second is called the Government of India Amendment Act Second, 1949, and the third Act is not numbered at all. So I submit that this Act should be called the Third Amendment. So, so far as the numbering of the Act is concerned, I do not know what will be the number of the present Act if it is passed.

Mr. President : I understand the Third Amendment Act related to evacuee property.

Mr. Naziruddin Ahmad : That may be, but that is another matter.

Mr. President : And so this is the Fourth.

Mr. Naziruddin Ahmad : But the point is absolutely different. My point is that in numbering the Acts, they must be consecutive. The numbering of the Acts should be consecutive, irrespective of the subject dealt with. Each Act passed by the Constituent Assembly must be numbered serially, as one, two, three, four and so on. The fourth Act has really been numbered Act No. V. This is the place to consider whether Act V should be considered as Act IV and whether this present Bill should be given retrospective effect, and be numbered IV, though it is passed after the fifth, or whether it will remain as it is, with a gap left in between. Should that gap be allowed to remain or should it be corrected at this stage ? These are the considerations which seem to me to be very important. There is some sort of lapse somewhere, and I beg to point this out so that it may be corrected by this House.

The Honourable Dr. B. R. Ambedkar : Sir, I am sure that there is some confusion in the mind of my friend Mr. Naziruddin Ahmad, as I find by reference to the various Acts that are passed by the Constituent Assembly the proposal in the Bill that it should be called the Fourth Amendment Act is the proper wording. The first Act that was passed by the Constituent Assembly is called the Government of India (Amendment) Act, 1949. The second one is called the Government of India (Second Amendment) Act, 1949, which deals with the removal of prisoners from one unit to another unit. The third Amendment Act, 1949, deals with evacuee property, and the Bengal election.

Mr. Naziruddin Ahmad : It is not called an Amendment Act at all, it has got a different name.

The Honourable Dr. B. R. Ambedkar : If you look at Clause 1, there you will see, "This Act may be called the Government of India (Second Amendment) Act, 1949." The next one is called the Third Amendment Act, 1949, which deals with the custody management and disposal of evacuee property and the election in West Bengal.

The confusion, I think, has arisen from the fact that we have passed two other Acts in the Constituent Assembly, one relating to the Abolition of Privy Council Jurisdiction and another amending the Central Government and Legislature Act, 1946. Those Acts are not amendments of the Government of India Act, at all. Although those Acts may have indirect effect on the Government of India Act, they are not amendments to the Government of India Act. We are, therefore, entitled to class this as the Fourth Amendment, because, so far as direct amendment of the Government of India Act, 1935 is concerned, this Assembly has passed only three Acts and no other.

Mr. Naziruddin Ahmad : But there is no Third Amendment Act, at all.

The Honourable Dr. B. R. Ambedkar : Of course there is. The third Act deals with the custody, management and disposal of evacuee property. I have got the Act here before me.

Mr. President : There seems to be a little confusion about this matter. Fourth is not the number of the Act. What is described here is the fourth amendment of the Act. That is not the number of the Act itself. The number of the Act is separate.

The Honourable Dr. B. R. Ambedkar : It is a description of the present Act. It is a short title.

Mr. President : It is only a description. The number will be Act No. 6 of 1949.

The Honourable Dr. B. R. Ambedkar : That is so. This is a short title.

Mr. President : The Constituent Assembly has passed five Acts up to now, in 1949 and this will be the sixth. But so far as amendments are concerned it is the fourth amendment to the Government of India Act, and therefore it is called the Fourth amendment.

Pandit Hirday Nath Kunzru (United Provinces: General): If out of the five Acts that we have already passed.....

Mr. President : This is the sixth.

The Honourable Dr. B. R. Ambedkar : We have passed in this Assembly five Acts. Out of them two have nothing to do with any amendment of the Government of India Act, 1935.

Pandit Hirday Nath Kunzru : Why were they placed before the Constituent Assembly if they were not of a constitutional character ?

The Honourable Dr. B. R. Ambedkar : The short title is quite different from the purport of the Act.

Pandit Hirday Nath Kunzru : The question is whether the right of a litigant to appeal to the Privy Council could have been taken away without an amendment to the Government of India Act, 1935.

The Honourable Dr. B. R. Ambedkar : The short title of the next Act was the Central Government and Legislature Amendment Act, 1949. That Act sought to amend the India (Central Government and Legislature) Act, 1946 which is an Act of Parliament and not the Government of India Act, 1935. The other Act was the abolition of Privy Council Jurisdiction Act, 1949.

Pandit Hirday Nath Kunzru : But the earlier Act to which my honourable Friend has referred, namely, the Amendment to the Central Legislature Act was itself an amendment of the Government of India Act.

The Honourable Dr. B. R. Ambedkar : No, no. That is not. There was a separate Act passed by Parliament called the India (Central Government and Legislature) Act 1946. This amendment was an amendment to that Act. That Act was outside the Government of India Act, 1935.

Shri R. K. Sidhwa : Perhaps Dr. Ambedkar will remember that the amendment to the Act from Cotton Seeds to Cotton was really an amendment to the Government of India Act, to which he has made no mention.

The Honourable Dr. B. R. Ambedkar : This would mean a sixth Act no doubt but the short title is something quite different to the number of the Act. We are discussing the short titles.

Shri T. T. Krishnamachari (Madras : General) : This is a matter of nomenclature and in fact in the previous Acts amended by Parliament, they have given different names for Acts which in purport amended the Government of India Act, such as the India-Burma Emergency Powers Act, 1942. The matter of nomenclature need not be pursued to its logical and bitter end. I suggest the House to proceed with the consideration of the Bill.

Mr. Naziruddin Ahmad : Is there any Act No. IV?

Mr. President : There seems to be!

The Honourable Dr. B. R. Ambedkar : There is.

Mr. Naziruddin Ahmad : I have not got it.

The Honourable Dr. B. R. Ambedkar : If you have not a copy, what can we do?

Mr. President : After all, nothing will turn upon the title!

The Honourable Dr. B. R. Ambedkar : I can give him the number also, if he wants it.

Act No. I of 1949 is called by the short title of "The Government of India (Amendment) Act 1949."

Act No. II of 1949 is called "The Government of India (Second Amendment) Act, 1949."

Act No. III of 1949 is called "The India (Central Government and Legislature) Amendment Act, 1949."

Act No. IV of 1949 is called "The Government of India (Third Amendment) Act 1949."

Act No. V of 1949 is called "The Abolition of Privy Council Jurisdiction Act, 1949."

Acts III and V have nothing to do with the Government of India Act, 1993 and that is why we call this the Fourth Amendment of the Government of India Act.

Mr. President : The question is :

“That in sub-clause (1) of clause 1, for the words ‘Fourth Amendment’ the words ‘Third Amendment’ be substituted.”

The amendment was negatived.

Mr. President : The question is :

“That clause 1 do stand part of the Bill.”

The motion was adopted.

Clause 1 was added to the Bill.

Clause 2

Mr. Naziruddin Ahmad : Sir, I beg to move :

“That clause 2 be deleted.”

Sir, I also beg to move :

“that in clause 2, the following statute reference be appended :

‘52 & 53 Vict., C. 63.’”

These amendments are of a formal character. So far as the 1st amendment is concerned, I move it because unlike the ordinary powers of the Secretary.in ordinary legislation, we have in our rules no power given to the Secretary to make any changes in the Bill after it is passed. This statute reference is necessary and it should be given.

So far as my earlier amendment is concerned, namely, the deletion of Clause 2, it arises in this way. When the last Act was passed, namely, Constituent Assembly Act No. V, at that time there was no such thing as Clause 2 in that Bill. Clause 2 is to the effect “that the interpretation Act 1889 applies for the interpretation of this Act as it applies to the interpretation of an Act of Parliament.” In the earlier Acts this clause appears but not in the Bill which really culminated in Act No. V. At that time I suggested that a clause like this would be necessary but Dr. Ambedkar told the House at the time that this clause was not at all necessary. If it was not necessary in the case of Act No. V, I suppose it would not be necessary in the case of this Bill to. There should, after all, be some kind of uniformity. In the earlier Acts we have this clause but not in the last. We should adopt a definite and settled policy as to drafting. It should not depend on the mood of the moment. I would therefore ask Dr. Ambedkar to consider whether he should link himself with the drafting of Act No. V or really go back to earlier Acts so as to retain this clause?

The Honourable Dr. B. R. Ambedkar : All that I can say is that this is the uniform clause that has been passed by this Assembly in the other Acts amending the Government of India Act. Therefore, in order to keep up the uniformity and to provide for the interpretation of this particular Act, Clause 2 is a very necessary part of the Bill.

With regard to the suggestion of my friend all that it means is that there should be a marginal note giving the chapter number of the Interpretation Act of 1889. That is matter for Draftsman to consider, and if he thinks such a marginal note is necessary, he will no doubt consider the matter. But this marginal note is not added against the clause of the other Acts which amend the Government of India Act of 1935.

Mr. Naziruddin Ahmad : Although Dr. Ambedkar says that in all the previous Acts this clause appears, yet I beg to point out that in Act No. V, there is no such clause. I pointed out the omission but I was over-ruled.

The Honourable Dr. B. R. Ambedkar : That was a self-contained Act. It required no reference to the Interpretation Act at all.

Mr. President : The question is :

- (a) "That clause 2 be deleted."
- (b) "That in clause 2, the following statute reference be appended :
'52 & 53 Vict., C. 63.'"

The amendments were negatived.

Mr. President : The question is :

"That Clause 2 stand part of the Bill".

The motion was adopted.

Clause 2 was added to the Bill.

Clause 3

Mr. Naziruddin Ahmad : This is only a punctuation amendment which, I think, the Drafting Committee would accept, though not openly, at least secretly.

Shri H. V. Pataskar : Sir, I move :

That in clause 3, after the words 'alter the name of any Province' the words 'after ascertaining the opinion of the members of the Legislature of the Province whose name is proposed to be changed' be added."

Now, Sir, my reasons for moving this amendment are these. From the Statement of objects and reasons it appears that the present Bill has been brought in this House for three reasons : the first is that certain Provincial Governments have expressed their desire to alter the name of the province—that is exactly what is mentioned in the statement of objects and reasons. The second reason for bringing this Bill is that these provincial Governments have further desired that these names should be altered before the commencement of this Constitution, that is, before the 26th of January 1950. The third reason is that there is no provision for doing that in the present Government of India Act, 1935.

Now, Sir, it is true that there is no provision in the Government of India Act, 1935, for changing the name of a province. So far as the principle of my amendment is concerned, it is this that any change in the name should be effected after ascertaining the views of the legislature of the province whose name is proposed to be altered. I would like to draw your attention to article 3 which we have already passed. Article 3 makes provision for the alteration of the name of any state, which the provinces are going to be called hereafter. The proviso to article 3 reads :

"Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless, where the proposal contained in the Bill affects the boundaries of any State or States specified in Part A or Part B of the First Schedule or the name or names of any such State or States, 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."

Therefore, we have already provided for such a change; if it is to be made after the 26th of January it can be made only by the introduction of a Bill, and such a Bill can be allowed to be introduced only after ascertaining the wishes of the Legislatures of the States concerned.

Now, it may be argued that the Provincial Governments have already expressed their desire. I do not know which Provincial Governments have expressed their desire, because from the nature of the discussions over the name "Aryavarta", and the heat which it generated I do not think, changing the name of a province is going to be such an easy thing as it sought to be made out.

It may again be argued that it is because of the Provincial Governments' desire that the names are going to be changed and therefore it practically amounts to ascertaining the views of the Legislature. I would here like to point out that the views of the Legislatures and the views of the provincial Governments do not always coincide. It is one thing to ascertain the views of the Legislature which is composed of the representatives of the people, and another thing to consult the Provincial Governments which are concerned with the day to day administrative problems of the provinces. The principle that we have laid down in article 3 is a highly sound one inasmuch as it is a better method of ascertaining the views of the people in general, because the Legislatures are expected to reflect the views of the people of the province.

Now, Sir, without going into details I can easily show how anomalies are bound to arise. Take the case of West Bengal. At one time they were in favour of changing the name from West Bengal to Bengal. Subsequently, there was a change of mind and they wanted to retain it as West Bengal itself. In fact, in our final draft we have mentioned it as West Bengal itself. In fact, in our final draft we have mentioned it as West Bengal. At the Third Reading Stage we again reverted back to the word "West Bengal". All these clearly show that even if a name is to be changed, we should ordinarily follow the sound principle which we have enunciated in article 3 that it should not be by the wishes of the Government which may be changing from time to time, but by the wishes of the Legislature which are likely to be more formal and firm.

Then, Sir, take the name of Koushal Vidharbh. In our first draft we mentioned it as Koushal Vidharbh which must have been after consultation with the Provincial Government. Subsequently they changed their mind and wanted to have it as Madhya Pradesh. Would it not be better, therefore, to follow the sound principle laid down in article 3? Governments change their views with changing circumstances and Governments are not really representative of the people in the sense in which Legislatures of the provinces are.

Mr. President : I do not think that this is a proposition which requires so much of argument.

Shri H. V. Pataskar : Another Point that I want to make is this. In the Constitution we have laid down the principle which is enunciated in article 3. Today, just one day prior to the passing of the Constitution, we want to go back on that principle, because some people seem to be in a hurry to change the names of provinces. After all changing the name does not make much difference. As the poet said, a rose will smell as sweet if called by any other name. Therefore, why not stick to the principle enunciated in article 3? Why flout it at this stage? Well, Sir, I would strongly urge that it is a bad precedent, showing scanty regard for the principles which we have so solemnly laid down for those who come after us to follow.

I would, therefore, request that this simple amendment of mine will be accepted by the Members of this House. The only argument against it would be that it would involve some time. Most of the names of the provinces, are names given by foreigners. It is much better that the changes in their names are made after ascertaining the views of the different legislatures and in a more calm atmosphere rather than hastily as it tried to be done by the introduction of the Bill.

Shri R. K. Sidhwa : Mr. President, my amendment reads thus :

“That at the end of the provision to sub-section (1) of section 290 of the Government of India Act, 1935, the following shall be added, namely :—

‘and any such Order made by the Governor-General shall be placed before the Parliament within three days of its making, and the Parliament shall have the right to either accept or reject the name contained in that Order.’”

Sir, section 290 is in such a limited form that it is very difficult for any honourable Member to move a comprehensive amendment to avoid any discrepancy or any suggestion which may not be found acceptable to the House or to the country; therefore within the limit within which the section is confined, namely to change the name of the Province, I had no other alternative but to move this amendment in order to safeguard the right of Parliament and the people of this country in not allowing any province to change the name according to its whim and fancy. While I have every regard for any province which wants to change its name quite historically or quite suitably otherwise, the necessity for my amendment has been substantiated by the arguments advanced by my friend Mr. Mohan Lal Gautam. He came in a challenging mood and said his province was the supermost compared to all the other provinces. (Interruption.) My point is that if there are some Provinces with that kind of mentality, this House has a right to see that such a mentality does not prevail. I am glad, Sir, that among their own provincial Members there was difference of opinion in naming the province as Aryavarta.

Mr. President : Please do not bring in any particular name. You go on the merits of the case.

Shri R. K. Sidhwa : Well, what is the remedy? My friend Mr. Patasker rightly apprehended the position and said there is no other alternative but to consult the legislature. The purpose of consulting the legislature also will not be served because the majority of the members there would say, “Have it Aryavarta or Hindustan”. Supposing they change it to Hindustan, what will be the remedy if the Provincial Legislature also says that U.P. will be known as Hindustan? India in future will be called Bharat but that does not mean that we discard the name Hindustan. Therefore you must tell me Sir how to safeguard the interests of the country in setting that this word Hindustan is not adopted by the U.P. as they did make a venture in the past unofficially to introduce it in the Congress Committee but in which they failed? Therefore, I want a little guidance in this matter either from the Chairman or from you, Sir, as to what safeguard we have. It is not a province which can change the name, it is the Governor-General who does it.

Pandit Balkrishna Sharma (United Provinces : General) : If it will satisfy my honourable Friends, I may say I hate the word ‘Hindustan’

Shri R. K. Sidhwa : That is all right, but you did suggest for your provincial Congress Committee the name of ‘Hindustan Congress Committee’ in 1939.

Shri Mahavir Tyagi (United Provinces : General) : You tell us those names which you do not want.

Mr. President : We are simply wasting time over a matter which does not require any interruption at all. The honourable Member may confine himself to his amendment.

Shri R. K. Sidhwa : I only want to safeguard the interest of the country, in the event of the Governor-General subscribing to the views Provincial Government or whosoever it may be because it naturally seems that the Governor-General will adopt whatever suggestion a Province may make. In that event, if we feel the name which has been adopted is not proper in the

interests of India, then my amendment seeks that Parliament should have a right—because that will be the only body after the dissolution of this Constituent Assembly—to consider that subject. That is the only remedy I find. I do not find proper the remedy which you suggest that the Governor-General is himself the safeguard because according to me Parliament is the proper body in such an important matter. My friend Mr. Pataskar has rightly stated that we are doing this a hurry. Why should we unnecessarily hurry about this matter? Why cannot we do it after 26th January? Let us decide in a calm mood. Let us consult everybody. You decided on one or two names and as Mr. Pataskar pointed out you had to change in this very Assembly two names within a short period.

I have no other suggestions to make for safeguarding the proper method of avoiding any name which may be detrimental to the interests of the country. Therefore, I suggest this method. I hope my friend Dr. Ambedkar will kindly bear in mind my suggestion which I make with the best of intentions. If he has any suggestions let me know them. I am prepared to accept them. My U.P. friends are unnecessarily annoyed. My suggestion is put forward with the best of intention as my experience has shown in the past. I hope my amendment will be accepted or alternatively any other suggestion may be put forward to safeguard the interest of the country.

Mr. President : Shri Jaspat Roy Kapoor. I request the honourable Member not to go into the merits of any particular names or any particular action which may have been taken by somebody in the past. He may confine himself to the proposition before the House.

Shri Jaspat Roy Kapoor : (United Provinces : General) : Mr. President, Sir, I am opposed to both the amendments, the one moved by Mr. Pataskar and the other by Mr. Sidhwa. The question of naming of a Province has assumed very great importance, greater importance than honourable Members would like to attach even to the question of creation of a new Province or increasing or diminishing the area of any province, for. Shri Pataskar's amendment suggests that if the Governor-General passes an order changing the name of a Province only he must consult the Provincial Legislature before passing the order, and Shri Sidhwa's amendment seeks that even after the Order is passed, by the Governor-General changing the name of a Province it should be placed before the Parliament and the Parliament should have the right to accept or reject the order previously made by the Governor-General. In the case any other order passed by the Governor-General under section 290, creating a new Province, changing the boundaries of an existing province, may be quietly accepted by the country as a whole with neither the legislature of that Province being consulted nor the Parliament having the right of say in the matter. It appears to me rather fantastic that the question of change of name should be considered so vitally important whereas the more vitally important question relating to the creation of Province should not attract any attention of honourable Members at all. I must submit that the manner in which the United Provinces has been dragged in this controversy hurts us because we of the United Provinces had always thought that we have been throughout acting in a manner which would receive the approbation of the rest of the country. As my honourable friend Mr. Mohan Lal Gautam had said, there is absolutely no provincialism in our Province and we had therefore thought that some credit would be given to us by Members of other Provinces and they would give us at least the freedom of giving a suitable names to our province.

Mr. President : Your Province does not come in here.

Shri Jaspat Roy Kapoor : I was mentioning it just incidentally, Sir. I would not pursue it in view of the shortness of time.

[Shri Jaspal Roy Kapoor]

My objection is to Mr. Pataskar's amendment, firstly on the ground that it simply does not fit in with section 290, and then that if it is accepted as it is worded it would simply set the legislature against the Government of the Province and the Government against the Legislature, for Mr. Pataskar does not want to make any amendment to the provision to section 290 of the Government of India Act which says that before an order under that section is passed by the Governor-General the Provincial Government should be consulted. According to the proviso the views of the Government of the province should be ascertained. Now what Mr. Pataskar suggests is that the views of the legislature should also be ascertained. Therefore it comes to this that firstly the views of the legislature should be ascertained and thereafter under the proviso, the views of the Government should be also ascertained. If it is presumed that the views of the Government and those of the legislature will not be different the amendment of Mr. Pataskar will be unnecessary and redundant. If their views are going to be different.

Shri H. V. Pataskar : There are instances in which those views have been different.

Shri Jaspal Roy Kapoor : Well, if there are such instances, we sitting here in the Constituent Assembly should not give encouragement for such differences of opinion. Our object should be to bring about conciliation between the legislature and the Government and not to create further occasions for such differences of opinion. Therefore I submit that the amendment simply does not fit in here.

As regards the amendment moved by Mr. Sidhva, I would say that Mr. Sidhva has a very fertile brain and he can conceive of all sorts of amendments. But I never thought that even he is capable of conceiving an amendments of this kind which is almost meaningless. He suggests that the order of the Governor-General should be placed before Parliament and that Parliament should have the right either to accept it or reject it. Of course it would not have any power to amend the order. It can only either accept the name which has been approved by the Governor-General or reject it. Now, what will happen if the name proposed in the order is rejected by Parliament? That will create a lacuna. Therefore I suggest that Mr. Sidhva's amendment is almost meaningless. Then again, this amendment of Mr. Sidhva is that it should be added to existing proviso. It means that the amendment of Mr. Sidhva would apply to all the orders which would be passed by the Governor-General under section 290 such as those relating to the creation of the new province, changing the boundaries of a province, etc. I do not think it is the intention of Mr. Sidhva that his amendment should be of such an all-embracing nature. But, as it has been worded, it would be applicable to all the orders passed by the Governor-General under section 290. I think Mr. Sidhva has not given careful consideration to his amendment. On reconsideration I am sure he will not press it. For these reasons I oppose both these amendments.

Shri M. Thirumala Rao : (Madras : General) : May I say a word, Sir?

Mr. President : I cannot stop any Member from speaking. But Members will remember that we have still several Members desirous of speaking on the Constitution.

Shri M. Thirumala Rao : I assure you, Sir, that I am not standing up merely to join in the debate. I have one point to make in connection with this Bill.

Mr. President : All that I can say is that the honourable Member is taking away the time of others who want to speak, but have not been allowed an opportunity to do so. The honourable Member has had his say already on the Constitution.

Honourable Members : 'Closure'.

Mr. President : I would draw the attention of the honourable Member to the demand for close of the debate.

Shri M. Thirumala Rao : Is it fair, Sir, that I should be asked to sit down because closure has just now been moved?

Sir, I have only a simple proposition to make. I do not mind whether the House accepts or rejects my proposition. I do not know why, when the Government bring in a measure before the House, the House should be deprived of an opportunity of judging whether the proposition is right or wrong. But this can be brought up after January 26. Nothing is going to happen if this proposition is brought before the House under article 3 of the Constitution. The Government can very well, in view of the discussion that has been raised here, withdraw the Bill now.

Shri Rohini Kumar Chaudhury : (Assam : General) : Sir, may I.....

Mr. President : No further discussion please.

Shri Rohini Kumar Chaudhury : I want to say that when a provincial Government agrees to change the name of its province, as in the case of Assam which wanted to change the spelling of the name of the Province from 'Assam' to 'Asam', and the Prime Minister.

Mr. President : That question does not arise in connection with this Bill.

Shri Rohini Kumar Chaudhury : An amendment to bring about this change was not allowed to be moved. But I understand from the Premier of Assam that the Government have agreed.....

Mr. President : You may raise this question at the appropriate time, but not in this connection.

Shri Rohini Kumar Chaudhury : But, Sir, I have. ...

Mr. President : I have ruled that the question does not arise now.

The Honourable Dr. B. R. Ambedkar : Sir, dealing first with the amendment of Mr. Pataskar, I am afraid I must point out that it would not fit in within the framework of section 290. My friend does not seem to have noticed that to the various sub-clauses of clause (1) of section 290 there is a general proviso which applies to all the sub-clauses (a), (b), (c) and (d). If he refers to that proviso he will find that his amendment would introduce double conditions for the operation of the new clause, namely sub-clause (e). Sub-clause (e) would be subject to the condition he wants to lay down in his amendment, namely, 'after ascertaining the opinion of the members of the legislature of the province whose name is proposed to be changed'. In addition to that, sub-clause (e) would also be governed by the proviso, namely that the Governor-General shall ascertain the views of the Government of the province. In view of this there would arise a very difficult condition. According to his amendment, the Governor-General will be bound to ascertain the wishes of the legislature. According to the proviso to section 290, he will be bound to ascertain the views of the Government of the province. He will therefore put himself in a double difficulty by reason of the fact that the Governor-General will have to consult two different bodies. That is not going to be a very easy matter. Secondly, he would realise that it is not quite justifiable that sub-clause (a) to (d) should be governed by a single proviso, while the new sub-clause (e) should be governed by two provisos.

Shri H. V. Pataskar : That is not so.

The Honourable Dr. B. R. Ambedkar : That is what I say. How do you know? Therefore it seems to me that he is putting himself and the Governor-General in a somewhat difficult position by making such a suggestion. I do not therefore think that at this stage it would be logical to accept it, whatever be the merits of the suggestion.

Coming to the amendment of my friend, Mr. Sidhva, he seems to me to have completely confused the intention of this article and the provisions contained in the new Constitution. He speaks of Parliament and requires that the Order made by the Governor-General be placed within three days of its making before Parliament. Mr. Sidhva has evidently forgotten that, when he speaks of the Parliament, he speaks of the Legislature which comes into being on the 26th January 1950. On that date the Governor-General disappears, and this section 290 as well as the sub-clause (e) which I am trying to introduce by this measure will also disappear. On the 26th January what will be on the Statute Book and operative would be the provisions contained in article 3 of the new Constitution. He has, I am sorry to say, not paid sufficient attention to the point that I have sought to make.

Shri R. K. Sidhwa : What the Governor-General does will be binding upon the President.

The Honourable Dr. B. R. Ambedkar : It seems to me that both these suggestions are impractical. As to the general proposition whether Parliament should be brought in or not, we have to deal with two matters. One is that there is a general desire on the part of some of the provinces that the names by which they have been called under the Government of India Act 1935 do not smell sweet according to them, and they would like to begin with the names which they think are good enough for them on the date on which the Constitution commences. The Constituent Assembly felt at the time when the matter was discussed last time that this desire of some of the provinces whose names are not good enough in their own opinion has a good case and therefore a provision ought to be made for the Governor-General before the commencement of this Constitution to take such action as he thinks necessary to carry out the desires of the Provinces. Therefore it seems to me that such a provision is necessary.

A certain amount of fear has been expressed that some provinces might suggest to the Governor-General names which may not be possible in the opinion of the other provinces, and consequently names which have been rejected by this House or disapproved by this House may be given to the new provinces without the knowledge of this Constituent Assembly or without the consent of the provincial legislatures concerned. It seems to me that that sort of suggestion is reading too much into section 290 as amended by this Bill, because under section 290 the Governor-General has absolute discretion in this matter and is not bound to act upon the suggestion made either by the Provincial Government or, if I accept the amendment of Mr. Pataskar, the opinion of the legislature. He is free to act and the only authority who is to advise him to act is the Cabinet at the Centre. All that is required under section 290 is to ascertain the views of the Government of the Province. That does not mean that the Governor-General is bound to accept any name that has been suggested. I am quite certain in my own mind that the discussion that has taken place in this House, the opinions expressed by this House on the suggestion made by Professor Saksena is regard to the name of the United Provinces will be taken into consideration by the Central Executive and by the Governor-General before he decides to take any action under the proposed amendment to article 290.

Mr. President : I will now put the amendments to the vote. Mr. Naziruddin Ahmad, do you want you amendment to be put to be vote? It is only a matter of punctuation?

Mr. Naziruddin Ahmad : It may be left to the Drafting Committee.

The Honourable Dr. B.R. Ambedkar: It is a wrong amendment.

Mr. Naziruddin Ahmad : If it is openly put to the vote, it will be rejected. Otherwise, they might accept it.

Mr. President : The question is :

“That in clause 3, after the words ‘alter the name of any Province’ the words ‘after ascertaining the opinion of the members of the Legislature of the Province whose name is proposed to be changed’ be added.”

The amendment was negatived.

Mr. President : The question is :

“That at the end of the proviso to sub-section (1) of section 290 of the Government of India Act, 1935, the following be added, namely :—

‘and any such Order made by the Governor-General shall be placed before the Parliament within three days of its making, and the Parliament shall have the right to either accept or reject the name contained in that Order.’”

The amendment was negatived.

Mr. President : The question is :

“That clause 3 stand part of the Bill.”

The motion was adopted.

Clause 3 was added to the Bill.

Mr. President : The question is :

“That the Preamble stand part of the Bill.”

The motion was adopted.

The preamble was added to the Bill.

Mr. President : The question is :

“That the title stand part of the Bill.”

The motion was adopted.

The title was added to the Bill.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

“That the Bill further to amend the Government of India Act, 1935, as settled by the Assembly, be passed.”

Mr. Tajamul Husain (Bihar : Muslim) : Mr. President, Sir, we have, got before USA Bill to amend the Government of India Act of 1935 the repeal of which is to take effect from the 26th January 1950. Therefore, Sir, we want this Bill only for two months. Why this hurry? Under the Government of India Act there is no provision for altering the names of provinces. We want to alter the name of one provinces or more than one province. Therefore we have this Bill. I am absolutely unable to understand the necessity of this Bill at all. I have come here to oppose this Bill entirely. I feel we can very well wait for two months more. We want that this Bill should take effect from the 26th November, that is from tomorrow, instead of waiting for two months more. The whole of the Government of India Act will itself be

[Mr. Tajamul Husain]

repealed by our passing this Constitution. We have mentioned there that the Government of India Act, 1935 will stand repealed from the 26 January, 1950. Then why this hurry for the change in the names of Provinces? You can very well do it after two months. You can decide now that you want to change the name of the U.P. or any other province and then that can take effect from the 26th January. I have very strong objection to this. We are spending on this Constituent Assembly Rs. 30,000 a day. We work for five hours a day. That means that we are spending Rs. 6,000 per hour. How we have been talking on this Bill which I consider to be absolutely unnecessary for an hour and twenty minutes, and by the time I finish, it will be an hour and a half. It means that Rs. 9,000 will be wasted, because I think this is an absolute waste of time. With these words, Sir, I want to oppose this. I think it should not be pressed and should be withdrawn. With these words, Sir, I oppose the Bill entirely.

Mr. President : The question is :

“That the Bill further to amend the Government of India Act, 1935, as settled by the Assembly, be passed.”

The motion was adopted.

DRAFT CONSTITUTION—(*contd.*)

Mr. President : Then we take up the discussion of the Draft Constitution. I am afraid I had thought that this Bill would take about quarter of an hour, but instead it has taken six quarters of an hour naturally as many speakers as could have been accommodated if we had started say at quarter past Ten cannot be accommodated now. Even in the list I have, I have got about 20 names still there. I thought of accommodating at least fifteen today but now I do not think I can accommodate anything like that number. I will leave it to the Members who will speak to take as little time as possible so that as many of them as wish to take part in the debate may be accommodated. I may assure them that. I have been all through the debate from the beginning; I have not missed a single word or a single sentence of any Member; there is nothing new that can be said by any Member and the only object in speaking at this stage is not to add anything to the knowledge or to the information which has been given to the House to enable it to decide about the merits of the Constitution but to enable Members to have their names recorded, so that when the reports are published, they may know that they also participated in the final discussions of the Bill and that can be done with one sentence. I assure them that their names will go down on the record even if they support the Bill with one single sentence and with this suggestion I now ask the honourable Members to take up the discussion.

Mr. Frank Anthony (C.P. & Barar : General) : Mr. President, Sir, first of all I wish to thank you for the unfailingly courteous and gracious manner in which you have invariably presided over the deliberations of this House. Deserving tribute has already been paid to Drafting Committee for the way in which it has performed its arduous and responsible duties. I would like very briefly to pay a particular tribute to my honourable Friend, who is sitting on my right, Dr. Ambedkar. I do not believe that any one of us can really gauge the volume of work and the intensity of concentration that must have been involved in the production of this voluminous and by no means easy document. And while, on occasions, I may not have agreed with him, it always gave me the very greatest pleasure to listen to his tremendous grasp not only of fundamentals but of details, of the clarity with which he invariably presented his case. It has been said that this Constitution has received a mixed recep-

tion. It is inevitable that its reception should have been mixed because, invariably, it is a mixed Constitution. It is composite in character. I believe that it is a blend and a proper blend between idealism on the one side and realism on the other. I know that some of my ardently idealistic friends have criticised it. They would like to have seen instead of this blend something in the nature of a decalogue or the Ten Commandments, something which was so wholly idealistic that it would have wilted and died under the first impact of administrative realities and political difficulties.

As I have said, I believe that we have borrowed enough from idealism to make the Constitution a fairly attractive and an aspiring document and on the other hand we have not based it entirely on material, from mundane considerations so as to retard or in any way to take away from this the inspiring elements. I realize, Sir, that it is not a perfect document, but at the same time I feel that in hammering it out, we have traversed all the processes of the democratic manufactory, that we have ranged through the whole gamut of democratic factors; there has been careful thought; there has been close analysis; there has been argument and counter-argument; there has been fierce controversy and at one time I thought that the controversy was so fierce that we might reach the stage of what the Romans called *Argumentum ad baculum* that is, settling it by actual physical force. But in the final analysis has pervaded a real sense of accommodation and a real feeling of forbearance.

So far as the minority provisions are concerned, Sir, I cannot speak on behalf of any other minority but I do claim to speak on behalf of the Anglo-Indian Community. I have paid repeated tributes to the generous and understanding way in which the Anglo-Indian Community has been dealt with under this Constitution. All I feel I need say at this moment is to reiterate my own gratitude and appreciation for the very generous way in which the Anglo-Indian Community has been treated.

Now I shall deal very briefly with certain aspects of the Constitution. I agree with my honourable Friend, Pandit Hriday Nath Kunzru when he says that it might have been wiser for us not to have extended the franchise at one bound to universal suffrage. I recall the experience in Britain and the precedent of Britain. I am aware that the precedents and experience in other countries are not sacrosanct for us. But what happened in Britain in this matter of franchise? Representative parliamentary Government was introduced in Britain in the 19th century but it was not till as recently as 1928 that universal franchise or adult suffrage was introduced. Though some of us are in the habit of talking about democracy without understanding its real purpose and its real content, to my mind a mere counting of heads has never constituted democracy. Democracy has always carried the postulate, the implication that at least the exercise of the franchise would be made, if not on an essentially rationalistic basis, would be made at least on a common-sense basis. And my own feeling is, Sir, that if we had pursued that path of wisdom—more than that—of statesmanship, that we would have been justified to hasten slowly in this matter, that we would have not at one bound adopted the device of adult franchise but will have proceeded progressively not necessarily gradually but progressively. As it is I am one of those who can only express the very sincere hope that when the next elections are fought or the elections after that and with an electorate which will be predominantly illiterate, with an electorate which will be predominantly unaware of exercising the franchise on a basis of being able to analyse political issues in a rational way, that this electorate will not be stampeded by empty slogans by meretricious shibboleths into chasing political chimeras which will not only lead to chaos but to the very destruction of the democracy which we have chosen to give them.

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And, Sir, I feel that there has been unjustified criticism of what has been stigmatized as over-centralization. I will say quite frankly that I was very happy, I was jubilant at every provision that tended to place more and more power into the hands of the Centre. Here again, we tend to mouth slogans about democracy but in the final analysis, in its actual spirit and content, what does democracy imply? It does imply the greatest good of the greatest number I say it with regret, I say it without pointing a finger, what is the increasing evidence which rises every day before our eyes, evidence with regard to most of the Provincial administrations? Do we not see that there is an increasing evidence every day, of increasing maladministration, of an increasing negation evidence every day, of increasing maladministration, of an increasing negation of the fundamental principles of democracy? Quite frankly, in the transition stage I would have been one of those who would have supported our going the whole hog that we should have avowedly and without any qualification accepted a unitary form of Government. We might have administered the provinces either through Governors or Rajpramukhs supported by a permanent civil service. At any rate, Sir, I feel that I ought to place on record my disappointment that certain vital subjects like Education, Health and Police should have been left entirely within the ambit of provincial autonomy. We have given a head to provincial regimes in the matter of education, and today, I regret to say, within a very sort time, they have taken the bit between their teeth and are running wild. What is happening in the Central Provinces? When I say this, I say advisedly, that the educational policy of the Central Provinces represents a deliberate negation of democracy, represents a travesty of the provisions of secular democracy. The linguistic minorities in the Central provinces only look forward to educational and linguistic death. That is what is happening. They have no regard for the linguistic minorities. Overnight they are pursuing an intolerant, parochial, aggressive linguistic policy which, as I said, is an absolute negation of every provision we have embodied in the fundamental rights. Not only that. You have given a head to these provinces and they are running amock. National progress, the larger interests of the country mean nothing to them. My own conviction is that a few years will be sufficient to make the leaders of the country realise the great blunder that we have committed in allowing education to remain entirely in the provincial sphere. You will see balkanisation of the country will take place so quickly, because through this powerful lever which you have left in the hands of the provinces they will split this country up into linguistic enclaves, seal one from the other, so that the idea of a common nationality will recede more and more into the background. I feel very strongly about this. I do not know the damage that is going to be done can be undone, unless some radical steps are taken in the not distant future.

Another matter which I would have liked to have brought at least in the Concurrent List is Health. May I say, Sir, in some provinces, it is all right. Bombay is fortunate in having a person of the stature of Kherji. The country would have been more fortunate to have transported outstanding men from the provinces to the Centre to administer the country on a unitary basis. As I said, about health, we have left it in the hands of the provincial Governments and inevitably this greatest nation building subject will be dealt with in a feeble, halting manner, according to the different capacities of the different provincial regimes.

Last but not least, I should like to have seen Police made a central subject. Police in a province like Bombay have a deservedly good reputation. But, let us be honest. What kind of reputation or lack of reputation do the police administrations in many of the provinces enjoy? What does the man in the street think of the police regimes in many of the provinces? I know what he thinks you know what he thinks. The police have fallen into disrepute in

many of the provinces. They are not regarded as guardians of law and order but as agencies of corruption and oppression. I should like very much to have been the Police administration at least brought on to the Concurrent List.

May I say a word about the Directive Principles? I know my honourable Friend Mr. Kher will not agree with what I say and my views will be regarded as heterodox and as perhaps striking a discordant note. I would not like to have seen prohibition put in the Directive Principles. I am not advocating the cause of drunkards or drunkenness. Far from it. I think prohibition as an ideal is a very good ideal. But, what I am afraid of is this: having put this into the Directive Principles, once again, you are giving a head to certain provinces which, without considering the realities, may rush ahead with this scheme. I am one of those who regard it probably from a rationalistic point of view or from the point of view of a psychologist. I regard this question of prohibition fundamentally as a psychological problem. I believe that there is a fundamental similarity in human nature everywhere, and that an Indian is no different in certain fundamentals from an European. I believe that essentially legislation in this matter has tended to be resented and regarded as an entrenchment on the domain of private life and private liberty. As I was trying to explain to my honourable Friend Mr. Kher will you be able to legislate for morality? Can you create morality through legislation? You can never do it; it has never been possible. I agree you may be able to wean certain people from drinking provided your process and programme of prohibition was so graduated and you accompanied it *pari passu* with measures of social reform. As long as you have your *chawls* for workers in the urban areas, and you cannot even provide them with a semblance of decent living conditions, what is the good of trying to make them moral or weaning them from drunkenness by legislation? As an ideal, I have nothing against it. What I am against is this. While the Prime Minister keeps on asking us to let first things come first, we have fallen into the unfortunate habit of making last things come first. What should be the first priority in any administration? What are the most urgent nation-building activities on which we should concentrate? Surely, health and education. But, today, ask your average provincial Government what it is doing in these matters. It pleads poverty on the one hand in the matter of the most urgent nation-building subjects which should have received top priority, and on the other hand chases these idealistic chimeras. We are throwing away crores and crores of Rupees. That is my main objection to the precipitate introduction of a measure like prohibition. Not that I have any radical objection against it; as an ideal it is a very good thing and if we succeed, it will be a great boon to many families.

While on the matter of Directive Principles, I would like to refer to this provision regarding cow slaughter. I know, again, here, that I will be treading on difficult ground. But, I want to make my position clear. What I resent in this Directive Principle is the insidious way in which this provision with regard to the banning of cow slaughter has been brought in. It was not there before. I cannot help saying that those fanatics and extremists who could not bring in this provision through the front door have succeeded in bringing it through the back-door. Sir, I am not a beef eater; I am not holding a brief for beef eaters. I say, you may ban cow-slaughter, but we should have done it honestly without our tongues in our cheeks, without resorting to methods which may give rise to the accusation of subterfuge. I ask my Hindu friends, does cow-slaughter offend your religious susceptibilities.

Shri K. Hanumanthaiya : (Mysore State) : Yes; it does.

Mr. Frank Anthony : All right; I am glad you have said so. If you had said that, I would have sponsored a provision that a ban on cow-slaughter should be introduced in the Fundamental Rights and that cow-slaughter should

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be made a cognisable offence. But, there were not people who were prepared to do that. Why bring in this provision in an indirect way? If it offends your religious susceptibilities, just as much as I expect you to respect my religious susceptibilities. I am prepared to respect yours. As I said, why bring it in, in this indirect way, as an afterthought into the Directive Principles? Look at the way you have brought it in. The clause reads:

“for the purpose of protecting the cattle wealth of India, for the purpose of protecting cattle, milch and draught cattle, a ban on cattle slaughter may be imposed.”

Shri K. Hanumanthaiya : On a point of order, Sir, is it right for the honourable Member to attribute motives, subterfuge and all that? I draw your kind attention to it. The honourable Member is saying that we have introduced a provision by way of a subterfuge. He has attributed motives in regard to the way we have put in this provision in the Directive Principles. Whether attributing motives is right, I leave it to you, Sir to Judge.

Mr. Frank Anthony : I apologise to you and to the House if what I may have said even remotely raises the suggestion of unparliamentary language. I was not attributing motives. I am merely stating objectively what had happened. As I have said, what has happened raises the accusation that perhaps motives may have been there to bring in this provision in an indirect way; I will not say it tantamounts to subterfuge. As I have said, I repeat, if this gives you offence, I would have been the first person to suggest that it should have formed part of the Fundamental Rights. In the way it has been done, it has been attached to a clause purporting to protect the cattle wealth of this country. Any child knows that in this country, in proportion to the population, we have more cattle than in any other country in the world. Any intelligent child also knows that in spite of this huge cattle population, our output for milch and draught purposes in the lowest per capita in the world. The preservation of cattle-wealth and the preservation of the best interests of the country would have required not the banning of cattle slaughtering but the slaughtering of over half of your present cattle population in this country. That is why I say, it should not have been done in this particular way. I only draw your attention to it and I leave it at that.

Finally I wish, to say a word about article 21. As a lawyer I will say quite clearly that this article 21 which says that a person may not be deprived of his life or liberty except by procedure of law as established, gave me cause for considerable misgivings. I am afraid, that in this form article 21, if the Executive and Government of the day choose to, can be abused and made a handle for totalitarian oppression. The Executive can make it a handle for superseding rule of law they can make it a handle for depriving citizens of the elementary principles of natural justice, and of jurisprudence. But the reason why I was disposed not to oppose this particular article, the reason why we are prepared to suffer an abatement of what I regard as a Fundamental human right—was because we are in a period of transition—and it may be necessary to give Governments and administrators extraordinary powers, not to be abused but in order to prevent any drift towards chaos and towards anarchy. And with that warning I sincerely hope that there will be no tendency on the part of any Provincial Government or on the part of Central Government to misuse or abuse the tremendous powers which we have given them under article 21. If they choose to, all that is required is that the procedure of law should be observed. We hope that the procedure of law which will be prescribed by provincial or Central Government will not be such as to represent the negation of the principle of natural justice.

May I end on this note—I believe that by and large we have hammered out a good Constitution. It will be fallible and it will be necessarily imperfect as it is the product of imperfect human beings. But I believe we have done a

good job of work and I believe that this Constitution deserves not only our good wishes but our blessings. But in sending it out on its mission with these blessings, I feel that the paramount consideration which should be before us permanently is not that we have framed a voluminous and important document—not that we have sought to give careful and elaborate guarantees to minorities, but that ultimately the final test by which this Constitution will be judged and by which it will stand or fall, the final test will be the intention and the spirit with which the provisions of this Constitution are worked.

Dr. B. Pattabhi Sitaramayya : (Madras : General) : Mr. President, Sir, it is rather hard lines for one who is garrulous to be limited to stated time, the more so when he is called upon to speak at the fag end of the deliberations of this Assembly. On the eve of our concluding our deliberations it is not without some trepidation that I come to speak and it is aggravated by the fact that I am to speak for a very short time. I had intended to review the whole position but this is not the opportunity for it. You very well remember how we had lisped,— we hesitated to talk in full and in clear language, the words “Constituent Assembly” in 1927; then we renewed our task in 1934, soon after the failure of our Second Salt Satyagrahic campaign and then we thought we were covering our retreat with bluff. Finally we came to a stage—all unawares—when this Constituent Assembly of a sort was thrust upon us with its *sections* and *groups* which we fortunately got rid of by paying a very heavy price for it and when we began our deliberations on the 9th December 1946 we were anxious to finish them and some of us had even hoped to finish our deliberations within six months. If we had finished our Constitution in 1946 it would have been a mess, if we had finished it in 1948 it would have been a medley. Fortunately this delay that has occurred has enabled us to see things in their true perspective and it has enabled us to develop administrative changes *pari passu* political developments. Supposing we had finished this before 15th August 1947, what would have been the nature of the Constitution? It would have been quite different. This delay has enabled the legacy which we had inherited from the British to be set right. Many people have considered that this Constitution is a bare imitation of the 1935 Act—that the Constitution is not a ‘revolutionary document’ and that we have merely imitated where we should have originated. These are all half-truths. A ‘revolutionary document’ is a contradiction of terms. Revolutions do not yield documents nor documents beget revolutions. We have imitated the 1935 Act because through a fortunate or unfortunate chance, it turned out that it was not through a bloody revolution that we have worked out our emancipation. It was by an imperceptible transition from the stage of bureaucracy and dependence to the stage of a *republic* and *cooperative commonwealth* that we have wrought these transformations. Accordingly we have never faced martial law, we have never hanged people at street-corners or on tree tops, we have never shot down people for their crimes and we have never shed a drop of blood either our own or of our enemies and therefore we have been obliged to pass from a civil government where tranquility prevailed unaffected by the perturbations of the moment into another kind of civil government which was our own and which was also a popular government. This delay has enabled us and our new administrators to piece together the 562 States which were detached and altogether unconnected with one another. Thus it is that while we were developing the Constitution or making efforts in the process of developing this Constitution, we were also taking up administrative measures in order to consolidate this country which we had inherited from the British in a very disorganized condition.

What is it that we inherited? We inherited a country that was divided longitudinally into Provinces and States, horizontally into communities, transversely into rural and urban areas and obliquely into Scheduled and non-

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Scheduled Tribes. All these have been pieced together—the Provinces must be there for purposes of administration convenience, but the States have been assimilated in their forms of Government into those of the Provinces. Thus we have one homogeneous country under one Central Government with one federal structure. Then we have disestablished the separate electorates which the Britishers had brought into existence assiduously from 1906 onwards dividing one community from another, first the Muslims from Hindus, later the Skills from the Hindus and finally the Harijans from Hindus. All these groups have been pieced together into one joint electorate and this is not a small achievement.

And next, you have also been able to remove untouchability which had divided one section of Hindus from the rest. Mahatmaji began his fast upto death on the 20th September 1932 and worked a miracle in the space of six dots. Now we have removed untouchability not merely in name, no merely in word and spirit, but also in law, so that nobody can hereafter say that so-and-so is an untouchable, for he would be punished with fine and imprisonment. We have also assimilated the tribes in our frontiers in the north-west and north-east and in other places as far as possible to progressive forms of Government, and we have built up tribal republics. In this manner we have implemented in developing our Constitution, those principles which have been advocated by Mahatmaji. You may remember in his tours of 1921, he was always mentioning only three sentences in each village and taking away three to thirty thousands of rupees from there. These related to Khaddar, Untouchability and Hindu-Muslim Unity. Khaddar we have perpetuated as the fore-runner of village industries and we have emphasised the development of cottage handicrafts in the development of the country. Untouchability we have removed by law. Hindu-Muslim unity we have carved out by joint electorates.

An Honourable Member : Prohibition?

Dr. B. Pattabhi Sitaramayya : Prohibition is a thing which has been left to the Provinces to be worked out. We have included it as one of the Directives in our Constitution. It will be great moral reform, the monetary equivalent of which may mean loss to the government of the province, but the moral equivalent of it would be a great asset to the nation in future years. (*Cheers.*)

And, finally, we have extended the franchise which gave us three and a half crores of voters at the time when the British left this country, to seventeen crores of voters who will adorn the electoral rolls immediately next year.

It is thus that we have converted a dependency into a cooperative commonwealth. Who dares to say that this not an achievement worthy of our labours, and worthy of this great country and all in the space of three years? When Canada was emancipated, her people assembled in 1842 when Loard Durham, the Lord High Commissioner was dubbed by the *London Times* as the “Lord High Seditious,” and the Canadian Constitution was only finalised in 25 years thereafter, *i.e.* in 1867, whereas we have taken three years in order to complete this Constitution.

I wish to draw attention only to two points with regard to the contents of our Constitution, the one dealing with the Fundamental Rights and the other dealing with the Comptroller and Auditor-General.

The Fundamental Rights chapter is of great interest to me since we had laid down the foundations of it at my house at Masulipatam through the labours of a committee which was appointed in Karachi in April 1931. Then we wanted to speak of not merely fundamental rights but also fundamental duties. But it did not look as if these were capable of being tabulated, because in the first instance every right implies and includes a duty. What is my right is my

neighbour's duty to me. The right of the wife to equality with the husband is the duty of the husband towards the wife in respect of the matter of equality. The right of the people to rebel against a government is also the duty of the government to hang the people for the rebellion. These go together. They are opposites, rather they are the obverse and the reverse of the coin, and the criticism that has been levelled by some friends in this House that the duties were not mentioned, is not quite correct because every right implies and includes a duty.

The second point on which I wish to say something is about the Comptroller and the Auditor-General, and in that we have done a great thing, in respect of the position that we have assigned to the Comptroller and the Auditor-General. No matter how perfect your Constitution may be, no matter how numerous may be the checks and the balances and safeguards for the right conduct of business of the future, it is money that counts, and we have to deal with about three hundred and seventy crores at the Centre and as much money in the provinces, and if all this money is not spent aright, and if the people deliver cheap gibes at men like me who count rupees, annas and pies, and to whom every rupee means sixteen annas and every anna means twelve pies, then there is no government at all worth mentioning, it is anarchy, it is chaos. It is loot. It is dacoity. And who is to control this? Is it to be a man who is appointed by the Ministry that should control this? No. The Comptroller and the Auditor-General must be as supreme and independent as the Judges of the Supreme Court perhaps even more so. He is no merely an Accountant-General, but he represents a judicial authority with a judicial frame of mind, and his acts must be acts of justice between what he considers to be right and what is actually done by the executive. At times he is called upon to criticise the executive and to expose it even to contempt. He should not therefore, come under the ire of the government or of any party or of the treasury or of the Finance Department. Till 1806 in England the Auditor-General was not independent, and till 1921 in this country we never thought of the independence of the Auditor-General in this country we never thought of the independence step by step and stage by stage, so that today, we have installed him as the supreme master, who has his own judgment to look to and who has no frowns or favours to be guided by from outside. Even so this is not yet perfect. The Auditors' Act is yet to be passed in this country, as in other self-governing countries and when this is done, we shall have placed the Auditor-General and the Comptroller as the supreme arbiter of India's finances, and then alone our Swaraj will be a proper Swaraj.

Finally let me ask you:—"What after all is a constitution?" It is a grammar of politics, if you like, it is a compass to the political mariner. However good it may be, by itself it is inanimate, it is insensitive, and it cannot work by itself. It is of use to us only the the measure in which we are able to use it, because it has tremendous reserve force, and everything depends upon the manner in which we approach it, whether we observe the letter and ignore the spirit or whether we observe both the letter and the spirit in equal measure. The words of the lexicon are the same, but they give rise to different styles of composition with different authors. The tunes and the notes are the same, but they give rise to different music with different singers. The colours and the brushes are the same, but they are rendered into different pictures by different painters. So it is with a Constitution. It depends upon how we work it. I shall take only one simple example—the joint electorate. We have established the joint electorate. Have we discharged our duty? Shall we leave the electorate to do what it pleases? The Muslims are some thirty-five millions in this country, less than about 8 to 7 per cent. of the white population. Is it possible for them in the joint electorate to win a single seat by their own unaided strength, without our co-operation? It is a gentleman's agreement that we have entered into, a terrible responsibility that we have taken upon our

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shoulders, when we asked them to give up their reservations and their separate electorates. We have to find as many representatives from the Muslim community through the medium of the joint electorate as would have been their legitimate share, if they had their separate electorates. Even so with the Indian Christians and others. And the way to all this was pointed by our women. I admire the women who in the Provincial Model Constitution Committee and in the Central Constitution Committee came forward and said, "No separate electorate for women, no reservation for women". Of course, they stand to gain now. But it required courage and imagination to say so then. They showed the way to the Muslims. They Christians had all along been fighting against reservation and separate electorates. But they had been compartmentalised. All the electorates were made not only water-tight, and air-tight but vote-tight; nobody from this compartment could cast his vote to one in the other.

The majority community has to see to it that this implied gentleman's agreement is honoured in letter and in spirit and that we give our friends more seats than their population entitles them to receive. If we are not able to do that we shall not be able to justify the great concessions that they have made.

Then again, there is the question of non-violence. Have we been true to Gandhiji's teachings? Yes, When have been. We have carried out his wishes to the last. If at all, Gandhiji was not able to get his wishes carried out, it was only during his own life-time that he failed; for he had set his face against partition yet ultimately he had to yield to it. Otherwise, the cardinal principles, like the four-pronged attack against the British and also the mission of reconstruction in the country, we have incorporated in our Constitution and therefore with a clean conscience we can say that we have carried out his wishes.

So far as non-violence is concerned it is not a thing that can be worked into the laws of the country through a non-violent state. It is an attitude and an approach, a direction and not a destination. It is an attempt, not an attainment. Therefore, so long as we are working towards the direction of non-violence, so long our labours are bound to bear fruit. The only example I can cite on this point is the great achievement of our Prime Minister in this recent tour of America where he won laurels as the key man of the age and possibly as the first Prime Minister of a World-State. He has been able to impress the westerners with this philosophy of ours. There is no doubt that we are saturated and surcharged with the spirit of non-violence no matter if we still employ the police on the one hand and the military on the other, or even if we be prepared to wage wars in anticipation of wars in which we may be involved.

When all is said and done, we must realize how much we owe to the half a dozen men that have fashioned this Constitution and given it a shape and form. Our friend, Dr. Ambedkar, has gone away, else I should have like to tell him what a steam-roller intellect he brought to bear upon this magnificent and tremendous task : irresistible, indomitable, unconquerable levelling down tall palms and short poppies : whatever he felt to be right he stood by, regardless of consequences.

Then there was Sir Alladi, with his oceanic depths of learning, and a whole knowledge of the Constitutional Law of the world on his finger tips. He has made great contributions towards the drawing up of this Constitution. He only has to perfect it all by writing a commentary upon it. That was the latest request of Mr. Santhanam to him and I hope he will fulfil it.

Then we have Mr. Gopaldaswami Ayyangar : copy as a maiden and unobtrusive, but rising to the full heights of the necessities of the occasion, combining always the real with the ideal, and bringing a soft and kindly judgement on to a severe issue.

Next you have Mr. Munshi, the like of whom we cannot see for his resiliency and receptivity; his wide and varied knowledge, his sharp intellect and his ready resourcefulness have been a tremendous aid to us.

Mr. Madhava Rao is not here now. He was a Diwan of Mysore. He had laboured hard in our Committee. He had vast experience from that of an Assistant Commissioner, Mysore, when I was still in my medical studies, until he became Diwan. He too has done his good bit in this work.

Then there is a man, who is almost unnoticed, and whose name has not been mentioned by any of my friends, to whom I would like to refer, the sweet and subdued Sa'adulla, who has brought a rich experience to bear upon the deliberations of this House.

Finally, comes the slim, tall man, who sits opposite to me, with his ready and rapier thrusts of repartee and rejoinder, whose (sharp-pointed) intellect always punctures or lacerates the opposition. But he is always able to cover up the injury with his plastic surgery and recuperative powers : and that is Mr. T. T. Krishnamachari.

We have all had the help of these people, but, Sir, the work of all these friends would have been of no use but for the sweetness, the gentleness, with which you turned towards a person when you wanted him to stop in his further speaking : the patience with which you waited in order to catch his eye,—not he to catch your eye,—and the very gentle manner in which you cast the hint that he should now wind up; and when some of us were rebellious, disorderly and chaotic, you simply smiled in order to choke that attitude.

It is a great thing I tell you that we have achieved. It is not right to under-estimate what we have achieved. Much has been done behind the curtains and but for the discipline and drilling of the majority party in this House, these deliberations would not have come to this happy end.

I thank you all for the great task that you have achieved and I congratulate you on it.

All that remains for me to say in that this Constitution is a good enough Constitution for us to begin with. Work it, work upon it : work at it: work it out for all that you are worth and as the great Parliamentarian said in the seventies of the 19th Century when the franchise was developed, in the British House of Commons, say to yourselves. "Let us educate our Masters."

Shri Jagat Narain Lal (Bihar : General) : Sir, following the speech of Dr. Sitaramayya made in his lofty style, there is hardly very much left for me to say. But I want to add a few words about this Constitution. It has been attacked and criticized by various friends and supported by various others. I consider this Constitution to be both Federal and Unitary. It is a Federal Constitution, yet it is Unitary. It is a Unitary Constitution yet it is Federal. Neither is it based entirely on the American model, nor on the British model. It combines both these models and has added something of its own to suit our Indian conditions. The powers of control which have been given to the Centre, are, I consider very necessary. The one crying need of our country has been the maintenance of solidarity. Time after time in its history, we have found this solidarity being broken and India falling at the feet of foreign Conquerors. Therefore, Sir, at a time when all foreign rule has been eliminated, the one crying need of the hour is the maintenance of solidarity and unity in this country. Following upon that, I would further add that any distribution of provinces on a linguistic basis must be completely avoided. We have strongly held the view that if a redistribution of provinces is to take place, it should be carried out on an administrative basis. Sir, the formation of an Andhra province is to be welcomed from that point of view. In our deliberations and enquiries we found that if there was a strong case, there could not

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be a stronger and a riper case than for the formation of an Andhra Province on administrative grounds. We also came to the conclusion that there was necessity of a redistribution of provinces on administrative grounds in the case of certain other provinces too. If and when the necessary conditions are there, and an opportune time comes, that redistribution may also take place.

I have found that even the incorporation of directive principles in our Constitution has been attacked by some people inside and outside too. But, these directive principles are very necessary. They contain the principles on which our State has to act and those principles are both Gandhian and socialistic, a mixture of both in their character. Article 45 of the Irish Constitution also contains those directive principles.

Now, Sir, I come to some of the drawbacks, or, I might say, some of those omissions which I regret. For example, Sir, I would have liked the name 'Bharat' to come before India. It is a fact that 'Bharat' and India have come in, but I would have liked 'Bharat' to come before India.

I am sorry, Sir, that there has been an undue anxiety in our minds about the avoidance of the name of God. Looking to the foreign constitutions, the Constitution of South Africa which in its very first article says : "The people of the Union acknowledge the sovereignty and guidance of Almighty God." In our country, Sir, which has always remained religious and has retained its spiritual character and which has produced one of the greatest spiritual personalities in the world in modern times too, I would have liked that the name of God should have been introduced. Again, the words "secular State" should not have come into the Constitution. It would have been enough if it had been said that the State should not interfere with any religion. Or, we could have said that the State should have a spiritual and moral outlook, instead of saying that it should be secular. The introduction of these words has created a lot of misunderstanding.

Many of us do not like the introduction or the acceptance of international forms of numerals. But, I have all along held the view that we should not force our views on others and whatever has been achieved by unanimity is welcome. I hope that when the time comes, we shall be able to see one another's point of view.

So far as the question of the banning of Cow-slaughter is concerned, I agree with the previous speaker that it should have been brought in a clear and direct manner into our Constitution. Banning of cow killing should not have been introduced in the way it has been done. The majority of the people of this country hold the cow sacred. They hold very strong views on this question and the cow represents, as Mahatma Gandhi said the entire animal kingdom. There was a time in this country when not only the killing of the cows but also of any other animal was prohibited.

I do not take more time of the House. With these few reservations, I support the Constitution. I hope and trust the dawn of a new era is near at hand which will lead the country to a brighter future and which will make the stage stronger, more solid, more prosperous and more stable.

In the end, I wish to pay my high tributes both to the Chair, or President, and to the Members of the Drafting Committee, particularly, to Dr. Ambedkar, Mr. Munshi and Mr. Krishnamachari amongst many others.

Mr. President : I might inform the House that Dr. Ambedkar will take up one hour in the afternoon; Mr. Krishnamachari will take the rest of the time from now up to one o'clock. so we may have an hour in the afternoon and I shall try to accommodate as many Members as possible.

May I have the permission of the House—because it is not provided in the rules—to accept the written speeches of Members?

Some Honourable Members : No, Sir.

Mr. President : I take it is not the wish of the House. But within that one hour in the afternoon, I shall try to accommodate as many Members as possible.

Shri T. T. Krishnamachari : Mr. President, Sir, at the outset I would like to express the thanks of the Drafting Committee to the Members of this Honourable House, who, whatever their views might be on certain provisions of this Constitution, have, practically, one and all, paid tributes, to the work of the Drafting Committee—and, Sir, not the least of them all to my septuagenarian leader who in such kind terms singled out every member of the Drafting Committee for recognition of his services, which I think we would all cherish to the end of our lives.

Sir, so far as the criticism that has been levelled against the Constitution or some provisions thereof are concerned, it would not be possible for me to cover the entire ground and perhaps it is not necessary. But at this stage it is likely that the public and those for whose purpose this Constitution has been framed are likely to get an erroneous view of the provisions of this Constitution if certain criticisms voiced by certain Members of this House which in my view arise out of certain misconceptions, about or out of an imperfect understanding of the provisions of the Constitution are not controverted. In the time at my disposal and with the permission of the House and your goodself, I propose to deal with some of these criticisms.

Sir, if I am to catalogue to various criticisms, it might take the entire time at my disposal. But I would like to tell the House that they form a bewildering complexity, one criticism contradicting the other. I might read out a few of the criticisms that I have jotted down. One of the basic defects of this Constitution is supposed to be that it is not a federal constitution, but a unitary one. There are other Members who feel that it is a constitution midway between the two—whatever that might mean. A third class of persons said it is a decentralised unitary state—I think it is Mr. Gupte who said it. And then again Mr. Gupte took objection to our using the word “state”, as statehood is not conferred on the units of this Federation. The general complaint has been that there is too much centralisation in the Constitution which deprives the units of any initiative. One complaint which has been common to the criticisms voiced by most of the people claiming to speak for the Provinces is that the Provinces have been left in a bad way financially. Another complaint has been that we have merely copied the provisions from other Constitutions. Reference has also been made that we would have been wiser to have modelled the Constitution on the United States Constitution or the Soviet Constitution. Mr. K. T. Shah, who is not here, has said that we have not provided for a working democracy.

Another set of complaints—mostly coming from speakers whose speeches I was not able to understand in their entirety, because of my own particular defect of not being able to understand the language in which they spoke was that it is entirely un-Indian in outlook and does not bear the stamp of Indian culture. Yet another complaint was that it does not have any economic guarantees. This was the complaint voiced by Mr. Damodar Swarup who, therefore, wanted the rejection of this Constitution.

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Then the complaint was made that it is too long and goes into unnecessary details and thus stifles growth. A Member from Travancore State (I think somebody also repeated that criticism) that the Weimar Constitution produced a Hitler and this Constitution might very well be the means of producing another Hitler. Of course, the complaint generally has been about Fundamental Rights particularly about those provision which deal with individual liberty and about the emergency provisions. Article 360 and 365 have come in for a lot of criticism.

Some of the Members from the Indian States have complained that the States have been treated badly. On the other hand, some Members from the Indian States have said that the States should not have been treated on the same footing as the provinces. Separation of powers is another theoretical consideration that has been urged and the speakers said that that has not been recognised and provided for in this Constitution. There have been honourable Members who have said that this Constitution makes the President an autocrat. Others have said that the Prime Minister has been made an autocrat in this constitution. Yet another point which is perhaps of fundamental character is that there is no mention that the President is a constitutional head of the State. There are other matters like the suggestion that the language provisions are halting and that the Constitution must have been framed in Hindi. Of course the cow has figured largely in the debates for these last seven days. The cry has been that socialism is not possible under this Constitution and more or less tacked on to it has been the complaint of some honourable Members that property rights have been safeguarded beyond necessity. Yet again, there was my honourable Friend Begum Aizaz Rasul who made the complaint that property rights have not been adequately safeguarded. So honourable Members will please note that there have been contradictory criticisms, one cancelling the other, and perhaps if the whole lot of criticisms are put together it might be that we might feel,—the Drafting Committee and the Membrs of this House might feel,—that we have not done a bad job after all.

Sir, I would like to go into a few fundamental objections because as I said it would not be right for us to leave these criticisms uncontroverted. Let me take up a matter which is perhaps partly theoretical but one which has a validity so far as the average man in this country is concerned. Are we framing a unitary Constitution? Is this Constitution centralising power in Delhi? Is there any way provided by means of which the position of people in various areas could be safeguarded, their voices heard in regard to matters of their local administration? I think it is a very big charge to make that this Constitution is not a federal Constitution, and that it is a unitary one. We should not forget that this question that the Indian Constitution should be a federal one has been settled by our Leader who is not more with us, in the Round Table Conference in London eighteen years back. I suppose his stand had to some extent shaped the provisions of the Government of India Act, though the question of Provincial autonomy had been decided largely because of the likes or dislikes of the Muslim members of the Round Table Conference. Now, what is a federation? I am glad that my honourable Friend Pandit Hirday Nath Kunzru is here because he alone of all Members of this House warned us against going into details in regard to what is a federation. It is not a definite concept, it has not got any stable meaning. It is a concept the definition of which has been changing from time to time. Leaving alone political theories of the ages before Christ and in the middle ages, in modern times or in relatively modern times, the first time that people who have exercised their minds about a federal constitution were the people of the thirteen American colonies and we find a reference to it in the writings of those who have framed the American Constitution, who produced several articles which were brought together in book called the "Federalist". It does happen that the connotation

which is now current so far as the theoretical circles are concerned has been given to it by the Federalists in America in the 18th century but even between that connotation and the modern one there is a considerable amount of difference. Students of politics will know that Hamilton did not think the same way as Jefferson or as Madison did. Though the issues between them were comparatively narrow and dictated by considerations that obtained at the time they framed the American Constitution, they were nevertheless wide enough in so far as they affected the interpretation of the Constitution subsequently. In fact, honourable Members who are familiar with the American Constitution will realise that Marshall who gave more or less a tone to the status of the national Government in America has been taking the view that Hamilton did and whatever he did by way of strengthening the national Government's power was more or less neutralised by his successors, particularly Chief Justice Taney who was an out and out Jeffersonian. Sir, I do not want to go into the details of the American Constitution and its progress, but the one fact which we have to realise is that whatever might have been the intention of the framers of that Constitution and their own particular connotation of what federalism should be, the whole thing changed after the American Civil War and from that day right to today there has been a progressive increase in the power of the National Government by a series of interpretations of the provisions of the Constitution, excepting for a very short period somewhere in 1919-20 when there was a reservation to Jeffersonian ideas. I am laying stress on this particular point even though it might appear theoretical, to cover a number of criticism against this Constitution. I would also like honourable Members to note these points merely because that would answer partly the charge that the Constitution is very long.

Many honourable Members have said that we should have copied the American Constitution. Some very worthy leaders outside who have the reputation of being students of constitutional law occupying high positions have stated that we should have copied the American Constitution and that this long Constitutional documents is worthless, or that we should have had a Constitution outlining only a few general provisions which would have allowed for growth. But it would ask those gentlemen outside and honourable Members here just to look at the decisions that there today an integral part of the American Constitution and they will then find that to understand the American Constitution it will be necessary to take into account not only the bare text but also the decisions of the Supreme Court over these hundred and fifty years. From 1862 onwards the powers of the national Government have been steadily augmented by various devices. For instance, even Marshall said there were implied powers. Subsequent judicial pronouncements have said there are inherent and express powers assigned to the national Government. Then again, judicial decisions have granted powers to the national Government because they were necessary for the exercise of the main functions of the Government. Again the Federal legislatures have enlarged their scope because they were incidental and necessary for their function. Sometimes some of these powers have been called resulting powers mainly because of the action of the exercise of the powers that have been enumerated. The treaty-making power of the national Government that finds mention in the American Constitution has been considerably enlarged. In fact, sometimes the Centre has made inroads into the provincial power as a result of this power. The legislative power for the grant of judicial power has also made inroads into the State power but not the least of them all are the three powers which have had a wide implication one was the general welfare power which finds mention in the Preamble and in article (1) section 8, then the Commerce clause and the taxing power. In fact my honourable friend Mr. Alladi Krishnaswami Ayyar had made mention of these in his speech. Again, the taxing power has been further stretched by using the appropriate spending power of the Centre so that in America today

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there is a central federal public health service, there are various other bureaux which administer directly their own departments in the various States.

I have gone into these details merely to tell the honourable Members of this House that if we should frame a Constitution on the American model we should perhaps have gone into greater details, than what we have done and we should perhaps have given the Centre greater powers than we have given in this Constitution.

Sir, it is rather difficult to say what the present position of Federalism is in so far as the American Constitution is concerned. But, in the latest book on the American Constitution written by Laski, practically in its closing paragraphs, he says "that if people want to understand the American Constitution, let them look at the position of the president. The significant increase in the powers and the status of the President has been the greatest change in the Federal system in America." He thinks that the classic theory of federalism would become obsolete in its historic form before long.

Are we, Sir, in framing our Constitution, merely to take only those features that are obsolete, only those features which have only historical value in the American Constitution and rally leave the operative portion of that Constitution in order to please the aesthetic susceptibilities of certain honourable Gentlemen here or elsewhere who feel that we should have a Constitution that would be short like a Prayer book capable of being put in the ladies handbag and taken along wherever one wanted. A Constitution should give the average man an idea as to what it really means. He should not be left in such a position as to make him dependent on judicial decisions and the advice of expert lawyers to expound it to him.

I would in this connection deal with a point raised regarding the vesting of the residuary powers. I think more than one honourable Member mentioned that the fact that the residuary power is vested in the Centre in our Constitution makes it a unitary Constitution. It was, I think, further emphasised by my honourable Friend Mr. Gupte in the course of his speech. He said : 'The test is there. The residuary power is vested in the Centre'. I am taking my friend Mr. Gupte quite seriously, because he appears to be a careful student who has called out this particular point from some text book on federalism. I would like to tell honourable Members that it is not a very important matter in assessing whether a particular Constitution is based on a federal system from the point of view whatever the residuary power is vested in the States or in the Central Government. Mr. K. C. Wheare who has written recently a book on Federalism has dealt with this point. But he has dismissed it as of no account. But even at the risk of going into some detail, I would like to mention that it is the German political philosophers who evolved the peculiar theory called the Competence—competence theory. This theory is whether the national Government or the State is allowed to appropriate competences which have been formally left to one or the other or had come into being at a later date. Only when the State is left with this competence such a Constitution would be a Federation. In actual practice such states had never come into being. 'If it so happens that a component State has to concede the power categorically to the Central Government it would not be a Federation. It would be a Confederation. It has been pointed out that definitions attaching such conditions are futile for the reason that the change sought to be made can be achieved by the amending power. And so far as the amending power is concerned, the initiative is always with the Centre.

I am glad that Mr. Pataskar in a very devastating but superficial criticism of the Constitution was able to concern himself that the best point in this Constitution was the amending power. I agree that the best point is the amending power

and observe that in regard to most of the matters covered by the Constitution the amending power rest with Centre. Applying the logic of the unitary this fact alone makes it a Federal Constitution.

Shri H. V. Pataskar : I did not say it was the only satisfactory provision but said that it was a satisfactory provision.

Shri T. T. Krishnamachari : I am quite prepared to accept my honourable Friend's enunciation of his speech. These factors do not go to constitution whether a Constitution is a federation or not. If you look into detailed provisions of any Federal Constitution you will find that so long as there is a National Government there is a sector in the Constitution which has a unitary character. But that does not mean that the Constitution becomes a Unitary Constitution merely because of the fact that whenever there is a National Government there are certain powers given to it whether by enumeration or otherwise. When those powers are exercised it would not merely by reason of this fact alone become a Unitary Constitution.

I would ask my honourable Friend to apply a very simple test so far as this Constitution is concerned to find out whether it is federal or not. The simple definition I have got from the German school of political philosophy is that the first criterion is that the State must exercise compulsive power in the enforcement of a given political order, the second is that these powers must be regularly exercised over all the inhabitants of a given territory, and the third is the most important and that is that the activity of the State must not be completely circumscribed by orders handed down for execution by the superior unit. The important words are 'must not be completely circumscribed', which envisages some powers of the State are bound to be circumscribed by the exercise of federal authority. Having all these factors in view, I will urge that our Constitution is a Federal Constitution. I urge that our Constitution is one in which we have given power to the Units which are both substantial and significant in the legislative sphere and in the executive sphere.

Now if you ask me why we have really kept the residuary power with the Centre and whether it means anything at all, I will say that it is because we have gone to such absolute length to enumerate the powers of the Centre and of the States and also the powers that are to be exercised by both of them in the concurrent field. In fact, to quote Professor Wheare again, who has made a superficial survey of the Government of India Act, the best point in the Government of India Act is the complete and exhaustive enumeration of powers in Schedule VII. To my mind there seems to be the possibility of only one power that has not been enumerated, which might be exercised in the future by means of the use of the residuary power, namely the capital levy on agricultural land. This power has not been assigned either to the Centre or to the Units. It may be that following the scheme of Estate Duty and succession duty on urban and agricultural property, even if the Centre has to take over this power under the residuary power after some time, it would assign the proceeds of this levy to the provinces, because all things that are supposed to be associated with agriculture are assigned to the provinces. I think the vesting of the residuary power is only a matter of academic significance today. To say that because residuary power is vested in the Centre and not in the provinces that this is not a Federation would not be correct.

Let me draw the attention of my honourable Friends to one or two good things we have done in regard to this question of the relationship between the Centre and the Provinces. We have dealt very carefully with the possibility of a vacuum in Government power. There will be no chance of a defect of power so far as the enumeration of powers is concerned even without going to the residuary power, which would leave a vacuum in the field of Governmental

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action. We have avoided to the extent possible the possibility of matters being taken to court on the ground that there is overlapping of federal and units powers which are mutually exclusive. This is one of the defects of the Canadian Constitution. The powers enumerated under Section 91 and section 92 of the Canadian Constitution are supposed to be mutually exclusive that it has resulted in a lot of overlapping or to use a legal term in the creation of "a twilight zone" between the Central field and the provincial field, and has also resulted in a large number of judicial decisions. We have taken care, while copying these federal constitutions to avoid the pitfalls into which the Canadian Constitution has fallen.

Again, so far as the concurrent field is concerned, we have made a considerable improvement both on the Government of India Act and the Australian Constitution the only other Constitution where concurrent powers are specifically mentioned. So far as the Australian Constitution is concerned, its concurrent field has given rise to a lot of conflict. There is not clear demarcation of division of jurisdiction in the field of executive action. This has given rise to a lot of conflict. We have tried to avoid these defects which were copied in the Government of India Act, by the wording of article 73. Though that particular article was the subject of a lot of discussion in this House, I still feel that that is one of the wisest decisions which have been taken by this House. In this we have avoided the ambiguity of section 126 of the Government of India Act. Here under the new Constitution, whenever the Centre interferes in the concurrent field, in matters of legislation, if it wants to have the executive power, it must take it explicitly. I am laying emphasis on this point because of the charge made here by honourable members that the provincial governments are left without any responsibility. I would like to say even if it savours of boasting that in the Drafting Committee I have been rather keen to see that there is no blurring of responsibility. Some Members in this House have been very keen that the responsibility of the Governments concerned should be clear; and I think this article avoids blurring of responsibility.

Another question that I would like to deal with is the question of the fiscal power, the sharing of fiscal powers between the units and the Centre. The charge has been very generally made in this House that the provinces have been left without any resources, and the Centre has taken away everything. I am afraid I must join issue with this statement that is either made merely because it has got a propagandist value or is made from a superfluous examination of the position as is revealed by the Constitution. What happens today in the provinces is—here I do not want to enter into any controversy with provincial Finance Ministers—that the provincial Finance Ministers in order to support their own financial policies have been saying, "we have no money; the Centre would not give us any money; the Centre has got all sources of taxation." I have heard recently one or two provincial Finance Ministers making the statement that after the introduction of the new Constitution, the provinces will have no financial power whatsoever. I am laying particular emphasis on this criticism because I think it is wholly wrong, wholly inaccurate, and even mischievous. In fact, this Constitution has not made any fundamental change so far as the apportionment of the finances is concerned between the Centre and the units, from the scheme of the Government of India Act. As honourable Members of this House know, we have not been able to have a complete and comprehensive examination of the question. There has been no taxation inquiry in recent times. You, Sir, appointed an Expert Committee. It had naturally very limited terms of reference and their report was made in a perfunctory sort of way. Therefore we had to adopt the scheme of the Government of India Act more or less. Now I would like to mention that in a conference between the Finance Ministers and Premiers of the Provinces and the States and some of the ministers of the Central Government and the Drafting Committee, I put forward the suggestion that the difference between agricultural and non-agricultural property so far as

direct taxes are concerned may be done away with, so that it would help in putting more money in the poor: and that, the entire income from income-tax on agricultural income can be handed over to the provinces. A few provincial Ministers did appreciate this suggestion, but the tallest amongst them said that they were not yet ready for the change. So it happens that conditions have more or less forced us to incorporate the provisions of the Government of India Act so far as finance of the Centre and the Units are concerned. It may be that in one or two matters certain restrictions have been placed upon the financial power of the provinces, for example in the matter of the levy of sales tax, but that does not mean that the Centre gets any benefit whatever thereby. It is merely to benefit the economy of this country rather than to benefit the Centre that such restrictions were placed on the levy of sales tax. I cannot understand the basis of the complaints made during the last seven days that this Constitution has deprived the provinces of the initiative because they would have no finances, that the Centre has all the financial resources in its hands, and therefore the Constitution is a unitary one. I would beg honourable Members of this House, most of whom are going to be Member of Parliament in the future, to examine this matter in all seriousness, and here I would like to recall the words of Dr. John Matthai when he appeared before us, or rather on the only occasion in which he appeared before us, when he categorically stated that there was really no rivalry between the Centre and the units so far as the financial power is concerned. In reality the Centre's needs are covered largely by defence administrative expenses and so on, and the Centre's has no territory so to speak in which it has any special interest and on which it might want to spend money.

Here I think I had better take note of complaints made by honourable Members from Assam. I agree that Assam may be in a very bad way, partly because of the exigencies of circumstances, and partly because of the acts of its Government. Whatever it may be, it would be the duty of the Centre and the responsibility of the future national governments to see that no province, no frontier province, no province which is economically weak, is allowed to go under for want of finances. As I told the House before, there is really no rivalry between the Centre and the units in this matter. The provisions that we have made so far as finances are concerned are article 268 under which there will be Central levy and State collection of certain duties, particularly on medicinal and toilet preparations, the proceeds being earmarked for the States. Under 269 there will be Central levy and Central collection for the benefit of the States of the proceeds of succession duties, estate duties and so on. Article 270 is the one which deals with income-tax. Honourable Members know that income-tax pure and simple goes into the pool to be divided between the States and the Centre, Article 271 gives power to the Centre to levy a surcharge on income-tax and other taxes for the benefit of the Centre. Article 272 gives the Union the power to levy excise duties, the proceeds of the whole or part of which may be distributed among the States. Article 273 covers export duty on jute and jute products, which for a period of ten years will be distributed among certain States. Article 280 deals with the Finance Commission which will advise the Centre on the distribution of the proceeds of taxes between the Centre and the units and the determination of the criteria that will govern grants made available from the Centre to the provinces. That is the best that we could possibly do in the Constitution in the light of the facts before us. I agree that what we want is that the total amount of financial resources available both for the Centre and the units has to be augmented and it has to be augmented if the ultimate purpose of this Constitution, namely, the economic betterment of the common man is to be undertaken; but the remedy does not lie in throwing stones at the Centre or at the Constitution and merely trying to shirk responsibility, so far as Provincial Ministries are concerned by saying that the Centre has got all the taxing power and we have none. Let me tell my honourable Friends in the House that the drift of taxing power in all Constitutions has been towards the Centre and merely because of circumstances that have now come into being that the States

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have become, where it is federal or unitary, welfare states from being Police States and the ultimate responsibility as for the economic well-being of the country has become the paramount responsibility of the Centre. Switzerland has handed over Income-tax to the Centre. By the sixteenth amendment the U.S.A. Constitution hand over the Centre income-tax to the national Government without any burden or any obligation to be distributed to the States by the Centre Australia by means of a compact has taken over income-tax from the States and the Rowell-Sirvois report so far as the dominion-provincial relations in Canada are concerned has recommended the complete obliteration of any power to levy income-tax on the part of the provinces, while it has also laid down certain duties and obligations has to be assumed by the Centre. It has not been recognised that there is no natural coincidence between the ability of a Government to handle a set of functions and its ability to collect revenues, and if today we hand over the excise duties to the units, what will happen? What happens in so far as the sales tax is concerned, would be repeated in a much worse form. There would not be any uniformity; there will be a large field open for evasion and in the result the economy of the whole country will suffer. If the money that the Centre will collect, which will be surplus to its requirements is intended for the States *i.e.*, the units and we have made a provision so far as the distribution of this surplus is concerned, I think the charge that the Centre has taken over all the financial powers and along with all the money that goes with it is completely baseless.

There is only one point which I would like to make before going to the next subject, though I have made a note of a number of points on this subject with which I cannot possibly deal with now, and it is the intricate question which my honourable Friend Mr. Gupte raised and I think it was also raised in this House on previous occasions also, though not explicitly. It has been mentioned that one of the chief defects of this Constitution is that we have not anywhere mentioned that the President is a Constitutional head and the future of the President's powers is, therefore, doubtful. I am referring to this point merely because it has a certain amount of validity in that in certain dominions attached to the British Empire this problem has been raised because of the peculiar circumstances in which the Governor-General of that particular dominion has been acting in the past. Chief Justice Evatt, as he then was, Mr. Evatt the Minister for External Affairs in Australia, has written a book in which he wanted specific provisions to be made in regard to the exercise of power by the Governor-General as the Constitutional head of the Dominion and incidentally mentions therein that even in the case of the King of England it would be better if it is laid down that he should exercise this power in a certain manner and on certain occasions by means of a statute. This is a matter which has been examined by the Drafting Committee to some extent. The position of the President in a responsible Government is not the same as the position of a President in a representative Government like America and that is a mistake that a number of people in the House have been making, when they said that the President will be an autocrat, and no one appears to realise that the President has to act on the advice of the Prime Minister. There might be some truth in the charge made that the Prime Minister might be an autocrat. Yes, the Prime Minister would be an autocrat if the party that elects him as leader and the Parliament to which he is responsible are both inactive because the tenure of office of a Prime Minister is perhaps only that amount of time that is necessary to pass a vote of no confidence on him. How a Prime Minister can be an autocrat when his tenure of office is so limited, unless there are other reasons which gives him the pull both over the Parliament and his party, is difficult for me to understand. So far as the relationship of the President with the Cabinet is concerned. I must say that we have so to say completely copied the system of responsible Government that is functioning in Britain today; we have made no deviation from it and the deviation that we have made are only such as

are necessary because our Constitution is federal in structure. Otherwise, that is the scheme of responsible Government that is envisaged both in the Centre and in the units. So far as the units are concerned the responsibility of the ministers has perhaps been in a very small measure curtailed only to the extent that it is absolutely necessary and has been expressly laid down in the Constitution. Honourable Members will please not that in article 163 we have said that the Governor should take the advice of the ministers excepting where he has been expressly asked to act in his discretion. An honourable Member asked me today what that meant. That was necessary because of Schedule VI, paragraph 9 and 18 referring to Assam, which is the only matter in which the Governor has to use his discretion; in paragraph 9 of the Sixth Schedule which is a matter of arbitration and in paragraph 18 of the Sixth Schedule he was to report to the President; otherwise, there is no discretionary power at all vested in the Governor and we want the Governor to act in a manner which would mean that he will be taking the advice of his ministers in all matters. It has been expressly laid down in regard to assent of bills which he had to reserve for the assent of the President by reason of the fact that it falls in the concurrent field or that it is a matter which relates to the High Courts. But the position of the President is not the same as the King of England because he has no prerogatives such as the King of England possesses. His part in the assent to a Bill is a matter which has been defined. All the powers that are left to him are perhaps those in which there will be a marginal use of discretion, perhaps when there happens to be a question of dissolution of the Parliament that is the dissolution of the House of the People, the question of calling upon any particular person to form the Ministry and the question of dismissing the Ministry. Sir, the time at my disposal is very short but I would like to assure my honourable Friends that in all these points, the conventions that have grown round the powers of the King of England in so far as his relationship with his Cabinet is concerned today are sufficiently strong for us to rest content with and there will be no misuse of these marginal powers by the President. The power of the Prime Minister in England has been progressively increasing, and instances in which probably the King had to use his discretion, namely in 1924 when he agreed with the suggestion of Prime Minister MacDonald to dissolve the House and then again in 1931 when he called upon MacDonald to form the Government in spite of the fact that the party to which he belonged had gone over to the opposition, these were matters where the discretion was more or less of a marginal nature. There were subsequent instances, notably the instance where the Prime Minister felt that even the King should no longer remain on the throne because of certain things that he was going to do, his abdication and subsequently in a matter in which he had to take the advice of the Prime Minister, in setting up of a temporary commission by a counsellor to act in his stead. These and other things in England have more or less established that the Prime Minister's advice is paramount, paramount in so far as the King cannot even call any person for consultation unless it be the Leader of the Opposition, and even then he has to tell the Prime Minister what transpired between them. The conventions are sufficiently strong and well established but a marginal instance might come into being and therefore, we cannot put in the Constitution precisely where the President must do this and what the Prime Minister can ask him to do and where he can use his judgment between two matters which are rather difficult to decide. Of course there may be an error or misassessment of facts or an error of judgment or it happens to be *bona fide* and it cannot be helped. We have considered this matter and on balance of considerations we felt that we ought to leave it to conventions and to such conventions that have been established in other countries following a system of responsible Government.

May I ask for 15 minutes in the afternoon, Sir?

Mr. President : Yes. Then we adjourn to three o'clock.

The Assembly then adjourned for Lunch till Three P.M.

[Mr. President]

The Assembly re-assembled after Lunch at Three P.M., Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

Shri T. T. Krishnamachri : Mr. President, Sir, I would like to deal with the points raised by Honourable Members in regard to the Fundamental Rights. With many of the provisions in that Part, honourable Members have been in agreement. But the attack that been in agreement. but the attack has been focussed on two sets of provisions, one dealing with the liberty of the individual citizen, and the others dealing with property. Sir, it is a moot question whether in a country with a Parliament elected on the basis of adult suffrage, where the common man is supposed to have a preponderant voice in the administration of the country and the making of the laws, it is necessary to have a set of fundamental rights incorporated in the Constitution. My honourable Friend Shrimati Purnima Banerji mentioned that she would have preferred that fundamental rights were left without any subtraction therefrom in the same manner as is found in the American constitution. Again, I have to mention that those friends who wanted a set of fundamental rights, particularly those dealing with individual liberty and so on, copied from the American Constitution, forgot the historical background of the incorporation of such fundamental rights in the American Constitution. These were incorporated merely because of the fear of a group of people who framed the Constitution, who felt that the newly-created Centre would develop to be a monster and would make inroads not merely into the rights of the States, but also into the rights of the individual—the natural abhorrence of those people of the same type of mind as Jefferson who were responsible for the incorporation of the fundamental rights in the American Constitution to a power national Government was the main cause. But, it would not be right to incorporate those provisions without any variations, or any amendment or subtraction in a Constitution that we are framing in 1949.

Let me take the provision in regard to economic matters, particularly, article 31. As I said at the outset, my honourable Friend Begum Aizaz Rasul said that they did not go far enough. I agree; I think she is perfectly right. Fundamental rights are intended only for the people who represent a certain class of persons usually called the vested interests. It is the vested interests that are afraid of the future Parliament elected on adult suffrage which might want to democratize, socialise and equalise the wealth and opportunities in the country. It is the vested interest that have to be afraid of the future. It is perfectly correct, through it may not be on merits proper to concede, for Begum Aizaz Rasul to make the complaint that the Fundamental Rights in regard to property do not go far enough.

On the other hand, a number of my friends here, including my honourable Friend Shrimati Renuka Ray, felt that the rights conceded to property owners in article 31 went far.

An Honourable Member : Too far.

Shri T. T. Krishnamachari : The position of these people who took up that attitude should be that fundamental rights are not necessary to be safeguarded in a constitution where adult suffrage is the order of the day, where Parliament will be elected by every adult citizen in the country. That is the natural corollary. On the merits of the question, I have a little more to say.

I do want the House to understand that there are two conflicting moods in the minds of the people while approaching the fundamental rights : those that feel that the fundamental rights have gone too far, and those that feel that the fundamental right have not gone far enough. Let me take up the position of my honourable Friends Pandit Kunzru and Pandit Thakur Das Bhargava whose

objections to articles 19, 21 and 22 and even to some other ones, were that there has been a subtraction of the rights conceded to the individual. Well, I must say that on pure merits, and in the light of what is happening now about us and has happened in the past my sympathies are entirely with them. All of us who came into politics as a result of a desire for freedom and dislike of the British rule, have done so because we were attracted by libertarian traditions attached to the rights of the individual. We wanted those rights to be safeguarded at a time when a foreign ruler was ruling over us. But today, if there is to be any subtraction of those rights, it would be effected by Parliament and by the legislatures of the States; in fact, Parliament will have the ultimate say, because most of the subjects which cover personal liberty are in the Concurrent List and Parliamentary enactments will predominate. If objection is taken to Parliament passing any act, it means that there is a certain amount of lack of confidence in the parliament which would be elected on adult suffrage. It might appear to be an ingenious argument; but that is a grim fact. My honourable Friends might choose between the two. Yes; what we have done is merely to state the proposition, and we have stated that if parliament so wills, it can subtract from the propositions. (a), (b), (c), (d) and (e), the rights conferred to the extent stated. If Parliament does not want it, it need not, and the fundamental rights stated will be there without any diminution therefrom. Any subtraction can only be done by a positive Act by Parliament enacting laws in regard to every particular right. That is the point I want honourable Members to understand. I also want those people, who criticise the Constitution on the basis that the fundamental rights conceded are worthless because they have been subtracted from to understand the point that the subtraction can only be affected by Parliament, and if they have any confidence in Parliament, Parliament will not do it unless it is absolutely necessary. I agree that the present circumstances colour our vision make us look at them in a way which distorts the picture. I have not been in charge of law and order in any province; I have not been in power; so it is fairly easy for me to sympathise with my friends who feel that notwithstanding the fact the British have gone, the hangover is still there both ways. It affects us citizens who criticise the Government. It affects those in Government because they have imbibed the traditions of our former rulers. I do not for one moment question the validity of the objections raised by my honourable Friend Pandit Thakur Das Bhargava or Pandit Kunzru on the ground that at the present moment there has been a certain amount of what appears to be misuse of authority or rather extra use of authority. But I do not think that is a matter which would exist for all times. At any rate if the Parliament of the future is not going to safeguard the liberty of the individual, I do not think that anything we put in this Constitution can possibly safeguard it. Therefore any insistence on putting into the Constitution Fundamental Rights completely unabridged and in a manner that was done somewhere about 160 years back by a country which had different ideals and different hopes is. I think, an argument which is besides the point and out of place altogether.

In regard to the economic provisions I should like to say a few more words. I perfectly agree with the tenability of the objections raised by friends like Shrimati Renuka Ray and others. In fact I have a lot of sympathy with these objections though I have always felt that the provisions as they now stand—the provisions which were originally the provisions of Section 299 of the Government of India Act did not permit any legislation undertaken by Parliament or the Legislature of a State relating to the principle of compensation to be taken to a court of law and to be decided thereafter. But why I feel that my honourable Friends who have criticised the provisions are right is because I see—in spite of my holding that view—in spite of the fact that my learned colleague Alladi Krishnaswamy Ayyar held the opposite view about a year and a half ago and now holds the view that those principles are not justiciable—the possibility of the matter being taken to Court is there and I feel that in this country we can

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not afford to have matters which are of great economic moment and importance to the average man in the country to be taken to court and for a period of uncertainty to ensue.

But I am coming to the most vital portion of the manner in which the structure of the Constitution was undertaken. Honourable Members must realize that this Constitution as it has been mentioned by other members—before me is a result of compromise. 296 people who have assembled here hold different views on economic matters and we cannot frame a Constitution in which it I say that I am not going to allow a particular thing to be done and other people must follow that, then there will be no agreement. The whole constitution practically—very important parts of this Constitution have been a matter of final agreement among the parties concerned and if anybody now objects to a single proposition after having agreed to most of the propositions. I am afraid they are doing something which is not proper. This Constitution has been completed as a result of agreement amongst most of us. I feel that in that particular matter we have exposed the common man to become the subject of litigation which might probably take years before a final decision is reached and might retard our economic progress. I have done so because there are a number of points in this Constitution which have been agreed to by friends who hold different views. Sir, I have no desire to stand in the way of honourable Friends who might like to speak for a few minutes.

Shri P. T. Chacko (Travancore State) : May I know one thing? I part VII there is no provision for the appointment of Rajpramukh. Under Section 155 there is provision for the appointment of Governor which is deleted in Part VII and in some States there is no right of succession to Rajpramukhs. I would like to know whether a provision for the appointment of Rajpramukh is not necessary is such case where there is no right for succession.

Shri T. T. Krishnamachari : I would ask my honourable Friend to look into article 366 clause (21) which provides the answer. I did want to deal with this aspect but I do not think I have got time. Mr. Sarwate raised the point in regard to the position of a Rajpramukh who misbehave against which he felt there was no provision, whereas we have a provision against possible misbehaviour by a Governor. I think that particular clause which is there [i.e. article 366 clause (21)] is adequate for all purposes in regard to keeping Rajpramukhs in proper behaviour. In fact there is another point that was raised by an honourable Friend who spoke to me also about it in regard to article 371 and in particular in regard to the position of High Court Judges in the States. Article 371, as it has been conceded by other friends here—Mr. Malaviya who spoke yesterday wanted it—is a purely transitory provision and you must leave it to the government of the day to see that it is not put into operation against States which are advanced and so far as salaries of High Court Judges in the States are concerned, well, so long as the salary of a High Court Judge in State in Part A is high, if we impose the same standard on the States—the States will become bankrupt. Certain anomalies are bound to arise because we have put the Indian States and the provinces together; but without putting them together we will have created a Constitution which would be something which will not be uniform. Actually that point has been raised by some of our honourable Friends but the limitations are there and we have aimed at uniformity subject to those limitations.

Before I close I would like to mention one matter which I think, the House will agree with me, is to be regretted. My honourable Friend and Colleagues Shri K. M. Munshi was eager to participate in the debate at the final stages. In fact I think he has something constructive to say as well in regard to the criticisms made particularly about separation of powers, the nature of the Constitution and so on but unfortunately he has developed a temperature and has

sore throat which keeps him more or less bedridden. I have no doubt the Members of this House who like him as much as I do would wish for his speedy recovery and regret that he is not with us today when we are finalising the work that we have carried on for over three years in which Shri K. M. Munshi had played a very important part.

Lastly, may I, Sir, mention the debts that we as Drafting Committee have to discharge particularly to the Ministries of the Government of India. The Ministry of finance, the Ministry of External Affairs, and the Home Minister have been very good to us and have assisted us considerably. With regard to the States Ministry, we owe to Mr. V. P. Menon and his assistants this task of integrating the States into this Constitution and they have been very accommodating and helpful. So far as the Law Ministry is concerned, I should like to mention by name two persons—the Secretary and joint Secretary—Mr. Sundaram and Mr. Bhandarkar—who have been of very great use to us insofar as ultimately the Constitution is to be handed over to them it is only right that they should do so but I think that I would be failing in my duty if I do not mention by name the great services they have rendered to us. I would also like to endorse what members of this House have said in regard to the services of Mr. B. N. Rau. His help we missed during the last stages but while missing his help we were aware of the enormous amount of assistance we had received from him during the earlier part of this work and particularly he was so progressive in his views, so sympathetic and so quick as to be able to evolve a formula wherever we had a difficulty. Sir I should also be failing in my duty if I do not mention that very happy circumstance about which honourable Friends have also made mention—of the fact that we were able to find a Joint Secretary and Draftsman of the calibre of Shri S. N. Mukherjee. It is no exaggeration to say that he was a real find. Not only is his ability as a draftsman so profound, but more than that, his willingness to work was even greater. (*Cheers*) And the House will also like to be told that practically everybody, from Mr. Khanna downwards, to the clerks, superintendents and the reporters, have had to work very hard. For the last eight to ten months having been closely associated with the work of the Drafting Committee, and having voluntarily undertaken some portion of its mechanical work, I was in a position to see that these young people were working on most days till ten o'clock in the night, all because they were so enthusiastic; and the last one month has been a month of very severe strain to them; and I do hope that the House will recognise the work done by them in framing this Constitution which is of a very vital and important nature.

Sir, it would be out of place for me not to mention the services of the two great leaders, and it is a pity that they are not here today to say a few words. But the Prime Minister, Pandit Jawaharlal Nehru has been a source of great strength and help to us. In fact, he has followed the Constitution and its various articles right from the beginning, and in many instances, we have had his very great abilities as a draftsman and writer to touch up particular articles put before this House. It was no doubt, unfortunate that during the early portion of our work, the Honourable Sardar Patel, was not in position to be with us because of his illness; but during the last three or four months, we had to go to him on several occasions for advice which he so willingly and cheerfully gave us. After all, they are the real architects of the Constitution.

I know it is very embarrassing, very embarrassing to me and to you, to speak of the person who has been in charge of the destinies of the Constitution of this country. I feel myself fortunate in having been associated with the Drafting Committee—a fact which I owe primarily to another friend about whom I have to mention—Dr. H. C. Mookerjee—who during the short time that you were away, functioned so effectively and so well as the presiding officer and it would be improper not to mention his name. But, Sir, the fact that I was in the Drafting Committee had been a matter of good fortune to me primarily in

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that I have been able to see you at close quarters. I have not doubt that it has been a matter of intense personal profit to me, and a matter of great pleasure. Members in this House have already mentioned about the work that you have done and there is hardly need for me to repeat it. But the House known that the President has been in close touch with the Drafting Committee and has practically had some say in most of the work that we have done, and his advice and guidance have been of great help to us.

There is only one final word and that.

Shri Mahavir Tyagi : Let others also have some time. please.

Shri T. T. Krishnamachari : On final word before I sit down and it is this. Let honourable Members realise that even those of us in the Drafting Committee had notions of our own, had bias of our own. but we approached this work purely without any bias, and the result is what is before the House. It may be good in parts like the Curate's egg, or it may be very good taken as a whole, but I would only say this in conclusion that people worked on this Constitution only for the purpose of giving the common man of this country a Constitution which will make his life worth living, and I would suggest that this Constitution be dedicated to him, and in that dedication lies the hope of the future good of this country and the efficient and orderly working of this Constitution.

Thank you very much.

Mr. President : Dr. Subbarayan. I would request you not to take more than five minutes.

Dr. P. Subbarayan (Madras : General) : Sir, I would thank you for giving me this opportunity, and I shall confine myself to the five minutes.

There are only two points which I would like to touch upon in this Constitution. There are two things that the British have left behind for us; one is the efficiency of the civil service and the other is the rule of law. And I think both these points have been carried out and incorporated in this Constitution, because without an efficient civil service, it will be impossible for the government to be carried on and for the continuity of policy to be kept. the importance of governmental administration, according to me, lies in the fact that there is continuity, and unless there is continuity there is bound to be chaos, and I think the Drafting Committee has been very careful to provide for this, and the Deputy Prime Minister himself made a plea for the services and made a right plea, because I feel in the contentment of the services really lies the safety of a country.

The second point I wish to touch upon is the rule of law which I think is a peculiar part of the English legal system. If there is anything which I would like to cling to in the future of this country, it is this rule of law. Professor Dicey in his Law of the Constitution has explained this position fully and I think we have provided in the Constitution, in the powers vested both in the Supreme Court and the High Courts of this country for any citizen to have his right established as against the government of the day, whether Central or provincial, so that there is no question of encroachment of rights, and the judiciary has been left independent enough to fulfil this task. My friend Mr. Alladi Krishnaswami Ayyar pointed out, and rightly so, that the judiciary should not place itself as an *imperium in imperio*, and I feel satisfied that the provisions that have been made in this Constitution will not make the judiciary an *imperium in imperio*. Of course, there is always that danger also. When people talk of separation of power, this separation of power may be made in

such a way that the judiciary may be invested with immense power that it might eventually lead to the break-down of the government of the day, which I think, is not the case in our Constitution.

On word more, Sir, and I am done. Some people seem to have fears about adult franchise. It must not be forgotten that even today most of the voters under the franchise that obtains today are themselves illiterate. But the Indian humanity is such that they have enough common-sense, enough horse-sense, if I may say so, which will make it possible for them to choose their rulers with discrimination, and to choose the people whom they think would be able to carry on the administration in a manner which will be for the benefit of the common man, of whom we have talked so much in this house. I am sure, Sir, we are forging ourselves a Constitution which will stand the test of time and it will lead this country to take her proper place in the comity of nations.

I am done. Thank you, Sir.

Mr. President : Mr. Mahavir Tyagi, you will please take only four minutes.

Shri Mahavir Tyagi : Sir, I am grateful to you for giving me this opportunity.

Sir, I assure you these four or five minutes granted by you are the most precious of my life, past, present and future, and they are the most thrilling moments. I stand today face to face with the picture of my old, old dreams and the fruits of my strenuous labours of thirty years. A concrete picture is before us. Dr. Ambedkar who was the main artist has laid aside his brush and unveiled the picture for the public to see and comment upon. The House has already liberally commented on it. It is a picture drawn by us all and I do not want to enter into a future commentary about it. I am in support of whatever has been said in favour of this picture, and I fully support it. After all, in all sincerity and humility we must bequeath to our posterity whatever is best in us. We have put in our best labour and given our best thought to it, and after a lot of discussions and deliberations we have arrived at this picture. We must now wholeheartedly bequeath it to posterity in the hope that they will forgive our shortcomings if any, and will make up these shortcomings with their wisdom. From the corner of my eye as I see it, and as also the world will see, the picture is also fraught with dangers and those dangers I want to bring on record.

We are experimenting with an experiment which has failed in the world. We are evolving a democracy; a democracy has not succeeded, in doing any real good of the people and of the masses, wherever it was tried. We are making the same experiment but in an improved form. Our democracy is an improvement on both the Parliamentary democracy of England and the Republican democracy of America. It is perhaps a mixture of both. Let us see if this democracy succeeds here.

Yet there is another danger. Adult franchise has been supported by many friends. I am personally very glad, because when supporters of this constitution could not get very many arguments, they harped on the few points which I and a few friends of my way of thinking had insisted on being put into the Constitution—I mean the 'village republics', the 'cottage industries' and 'prohibition.' These points were resisted by many responsible persons in the past. But now I see that those very persons are banking on these arguments to support this Constitution.

Another big argument they repeat in support of this Constitution is the great experiment of adult suffrage. My fears are that it is a monstrous experiment that we are going to make and this might work as a python. I do not know

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where it would lead us, but the experiment will have to be made. I hope the future generations will be responsible enough to come out successful from these experiments.

Although I have very respect and praise for this Constitution, yet there is one thing which I am most afraid of, and it is that this Constitution is tendentious to create a class—a class that democracy has created everywhere—of ‘professional politicians’. All democracies are run by professional politicians’ and I am afraid that is the main cause of their failures, because such people begin to live on democracies. It becomes with them a profession, ‘the Stagecraft’, becomes their only source of living. That is the bane of democracy and I want to make the future generations aware of this. It creates ‘professional politicians’—those whose earnings depend on politics, with the result that they cut themselves adrift from all creative professions. If this democracy is also to be run by such persons who will have nothing else to fall back upon, and who live on Ministries or on the memberships of the Parliament, then this democracy is doomed, I am sure.

Such is the danger. I therefore want the coming generations not to play into the hands of persons who are ‘professionals’. This Constitution should rather be run by ‘political professionals’—persons who have their own professions to live upon, but who come here to run the State voluntarily or on small pays because along with their own personal professions they had an interest in politics and had a will to serve the country. This is how I would like this picture to work. But the picture from the villagers’ point of view is dull and dead. I cannot give any argument to convince the villager that from 26th January 1950 his lot will be better. Nor is there anything tangible through which he can better understand this Constitution; because we give the villager nothing but the vote, which we will take from him after two years. That is the only thing we give him. So, I submit that it is only when those who till the soil are enabled to run this Constitution, that they would appreciate it to be their charter of rights and freedom. Otherwise the Constitution is dull. There must be a leader. I hope our Indian earth is not so sterile that it will not give birth to a leader who will whisper life into this mould of the Constitution so that it could speak. It would speak if only we had the courage of our conviction, and I tell you that the chanting of a Maha Mantra is necessary, and I am sorry that there is no one in India today who can whisper that Maha Mantra which could make the whole of our Nation dance about this little book. And may I hint what it is? I know at this stage the House cannot accept anything, but future generations may. Only one thing will make this constitution attractive. If the whole of this Constitution were provided with one supreme provision or safeguard, then I think the whole thing will be all right. It is this: if we could add a proviso to it as follows:

“Notwithstanding anything contained in this Constitution, no citizen of India shall draw for his personal use either from the public exchequer or from private enterprise a pay, profit or allowance which exceeds the wages of an average wage earner.”

If that were there, the whole of India will at once come round this Constitution. So long as this is not there, India will not appreciate it because this Constitution will only safeguard the bread of those whose hands are full of bread and not of those whose hands are empty.

Shri Suresh Chandra Majumdar : (West Bengal : General) : Mr. President. Sir, as the Constitution for a free, sovereign India is being finalised, may I be permitted by this august House to strike a personal note and recall the memory of painful shock felt by a school boy’s heart on a night nearly half century back? On that night I was reading my school text book of India history and

had arrived at the beginning of the so-called "British Period". Of course, it required no reading of history books to make one aware of the country's subjection to foreign rule—even a child could feel it. What shocked my young heart and filled it with anguish was to learn how the British Power, continuously fed on our internecine quarrels, raised itself on the ruins of Sivaji's dream that had almost come true. The failure of the Maharattas struck me as the greatest of tragedies and the adolescent, who was already dreaming of a free India again, felt depressed and wondered whether we could ever triumph over our own past and emerge as a free united nation. Today I recall those bitter reflections and am all the more happy and proud of what the nation has achieved.

I shall not dilate on the events of the intervening years. Today I remember vividly the time when Sri Aurobindo came to Bengal from Baroda and inaugurated a renaissance movement and a new era of fearless, vibrant nationalism. He inspired an activist revolutionary organisation and I had the privilege of becoming an humble camp-follower through my guru, the late Jatindra Nath Mukherji. Then followed the wonderful days of the Swadeshi and the Revolutionary movements with their trials and tribulations—people struggling on against the foreign domination with blood, sweat and tears. Then suddenly came the first World War and with it also came the mighty engine of oppression—the Defence of India Act. And under its whells the whole freedom movement was mercilessly crushed—as if never to rise again. The whole country was plunged into impenetrable darkness;—not a speck of light was to be seen anywhere. But it was only a temporary phase. That is how I felt it then. With the end of the first World War there appeared on the Indian scene the refulgent figure of Gandhi—new India's man of destiny, the Father of the Nation, under whose incomparable leadership the Congress of the country remoulded itself into a mighty instrument of struggle for national freedom. The darkness began to melt away. Through a series of struggles the nation was led by him until he brought it to the goal—a free and sovereign India. One feels it was a supreme privilege to have been an humble participant in this historical process as we as to be associated my leaders and elders and colleagues in the making of a Constitution for the free Republic of India.

The Constitution—the fruit of so much labour and thought—is being discussed throughout the country. It has been praised to the skies and also abused in the harshest possible language. There are others—I think the majority—who see in it a mixture of things good and bad but one the whole practical and acceptable. How do I feel about this Constitution? There is one feeling in my mind which dominates every other—the feeling that this Constitution is wholly of our own, 100 per cent. Indian making. It may be good, bad or anything but it is we, Indians, who have framed it. It has not been imposed upon us from outside nor by any alien authority. As we have made it, so we can amend it in the future if we want to. It is our very own with its good features and bad, if any. The making of this Constitution has been itself a supremely free act, a supreme expression of national freedom and I hail it as such. This gives me an immediate feeling of freedom and I would offer this personal testimony to that section of my countrymen who under a frenzied delusion are crying, "*Ye Azadi Jhutha Haj*". I think that cry is contradicted not only by my feeling but by that of all Indians barring a handful.

It is a commonplace but it would bear repetition, namely, that the success of a Constitution, even of the most meticulously written Constitutions, will depend not so much on its language as on the spirit in which it is worked. It depends on us, the people, to make it or mar it. I, therefore, humbly appeal to all my countrymen to approach the Constitution in a spirit of co-operation and to bring to its working all the patriotism and selfless devotion of which the

[Shri Suresh Chandra Majumdar]

nation is capable of and if they do so, I have no doubt that this Constitution will prove to be an instrument for the enlargement of our freedom, prosperity and happiness.

Sir, one other thing which I cannot help mentioning in connection with the making of this Constitution is this. When the Constituent Assembly was convened it was given the task of framing a Constitution for the whole of India. But since then the country has been partitioned into two and necessarily the present Constitution covers one part only. Future alone knows whether it would again be possible to have a Constitution covering the country as a whole.

In conclusion may I offer my respectful congratulations to Dr. Ambedkar and to my elders and colleagues in this House on the successful performance of a great, arduous and historic task? And I am sure I am echoing the sentiment of everyone here when I think you, Mr. President, for the calm, patient, courteous and altogether exemplary manner in which you have guided the deliberations in this House.

Jai Hind!

Vande Mataram! !

Shri Deshbandhu Gupta : *[Mr. President. I think you that in spite of little time at your disposal you have been kind enough to give me few minutes. Now is the time for rejoicing as we are closing the last chapter of the great work which we had started three years ago. This is the time of offering greetings and thanks and not criticism. For three years we have worked together and now we have given it a final shape. Now that we have framed the Constitution bitter criticism is not proper but I would like to remind my honourable Friends that the Constitution which we, in Delhi have been making and which now has come before the country and the world, does not inspire enthusiasm in the hearts of the citizens of Delhi. I am not complaining because I am sure that the Members of this Assembly have every sympathy for the demand of the citizens of Delhi. If they could they must have made such alteration in the Constitution which might have provided an occasion for rejoicing for the people of Delhi, and verily with the enforcement of this Constitution on the 26th of January, a better day must have dawned on Delhi. I know that the Members of the Constituent Assembly have their personal attachments towards Delhi and have also some idea regarding its hardships. But due to the misfortune of Delhi we have been facing some such problems which have put obstacles in our way. That is why there is no provision for Delhi in this Constitution. Today when the whole country has achieved freedom and peoples' Raj has been established, twenty lakh citizens of this province are under the impression that no change has taken place in the administrative system of Delhi—Delhi which fought the battle of freedom in 1857 and for six months her people faced the enemy cannons in the face of starvation, that Delhi every part of which reflects the History of India. The set up which was here before August 1947 will continue. You can imagine the dependency of the citizens of Delhi.

There is however one ray of hope. It is the assurance given by our Prime Minister that before 26th January Parliament could make a provision which would enable the citizens of Delhi to have an appropriate share in its administration. I hope that when such a Bill comes before the Parliament no Member of this Constitution Assembly will forget the assurance given by the Prime Minister and let the proverb "Nearer the church farther from Heaven" to be applied to Delhi I hope that you will keep in mind the

*[] Translation of Hindustani speech.

citizens of Delhi. The Citizens of Delhi are not putting forward a big demand, they only want to have a place in this beautiful bouquet and in this beautiful picture that you drawn.

There is yet another point to which I would like to draw the attention of the House, under the chapter of Fundamental Rights, there is no article regarding the Freedom of Press. We have drawn much in this Constitution from different constitutions of the world. We have copied many things from the Constitutions of Ireland, America and other countries. But we have not derived any benefit from them regarding Press which is called Fourth State. In our Constitution there is no mention of it.

Mr Jefferson, a great American Constitutionalist said : “Were it left to me to decide whether we should have Government without newspapers or newspapers without Government I should not hesitate a moment to prefer the latter. But I should mean that every man should receive these papers and be capable of reading them”. After the American Constitution was framed the article of reading the Freedom of Press was inserted in the Constitution as an amendment. I want that there should be a mention of the Freedom of Press in our Constitution also in specific terms. I am sure that time will come when Members of our Parliament will also consider this issue and will not hesitate in inserting an amendment regarding this and our Press will also acquire the status which it deserves in our Constitution.

With these words I thank you once again and pray that may this Constitution be crowned with success.]*

Pandit Balkrishna Sharma : Mr. President, Sir, as I sat listening throughout this debate to the various speeches for and against this Constitution, I was reminded of Victor Hugo’s famous book, “The Ninety-three”. In that book Hugo writes about the convention, and he says “now we approach the convention. Now we approach the Himalayas” and he proceeds further on saying perhaps we are not in a position to realise the fullest importance of this occasion because we are too near it. He is right. Look at the mountain from a distance and to a certain extent you are able to realise the grandeur thereof, but if you be too near it is not possible for you to realise that grandeur.

I think, Sir, those of my friends—the critics and the supporters—who have spoken at this third reading stage of our Constitution, appear to me not to have had that vision, that breadth of mind, the capacity to appreciate the historic importance of this occasion. We have come here and criticised our own Constitution. Yes, it is very likely that there be flaws in it, it is very likely that there may be people whose views do not tally *in toto* with all the provisions of this Constitution, but then it does not lie in our mouth to come here and address this august Assembly in the spirit of carping criticism. Who, after all is responsible if there are defects in the Constitution? Is it not we who have been at it for the last three years that should be held responsible for it? I can understand a man like my friend Seth Damodar Swarup standing up and saying this is a Constitution which the people of this country will not accept, but I can tell him that we here for the last three years have been sitting in the capacity of the representatives of the people. We are the will of the people, what the Russians call, “Narodnia Volia”. We are the will of the people and in the capacity we have sat here for the last three years and I can tell you each and every clause of this Constitution is acceptable to the people in this country. Let there be no doubt about that.

There are four or five points about which this Constitution has been criticised. Firstly it has been said that we have leaned too much on the side of centralisation. Secondly, the objection has been raised that the Fundamental

[Pandit Balkrishna Sharma]

Rights have been hedged round by so many obstacles. The third objection has been that it is un-Indian in spirit and the fourth objection has been that it is more or less a copy of the Government of India Act. Fifthly, it has been said that this Constitution does not give any occasion for the country to feel the glow of that economic freedom which we all wish the country to enjoy.

These are the five points on which the Constitution has been criticised. Let us take into consideration each and every objection and try to bring to bear upon it the light of reason. When we say that we have erred too much on the side of centralisation and when we criticise our Constitution on this account, do we not lose sight of that historical tendency of drifting apart in our history, in our traditions? This country has been afflicted with that fissiparous tendency which has been the ban of its progress. And, remembers, India has been able to raise her head in history only when there has been a strong Central Government established. Otherwise, there has been nothing like Indian history, nothing like the glory that was India. Therefore, we should not forget that when we have to counter that tendency, that fissiparous tendency, that centripetal tendency, let us not forget that it is very necessary that the Centre must be made strong.

The second objection has been that the Fundamental Rights have been given by one hand but have been taken away the other. I have never been able to appreciate that argument. Does civil liberty, in the words of Mahatma Gandhi, mean criminal licence? Civil liberty does not mean criminal licence. If there is freedom of speech, it does not mean I should be free to go on abusing any and everybody that I dislike, and it is this sort of substractions that have been introduced in our Constitution, and therefore this argument seems to be very hollow and I have never been able to appreciate it.

With regard to the third argument that it is a copy of the Government of India Act and that it is un-Indian, all I can say is that it is to the credit of the Drafting Committee and Dr. Ambedkar and all those who have been associated with him, that they were not inspired by the spirit of narrowness. Here, after all, we are framing a Constitution and the modern tendencies, the modern difficulties, the modern problems that are facing us are there and we have to provide for them all in our Constitution, and if we have leaned on the Government of India Act for that matter, then I do not think that we have at all committed any sin.

As for the criticism that it is un-Indian in spirit, all that I can say is that we Indians have sat here, we have framed a Constitution. The phraseology of course is un-Indian, but then there are so many problems facing us today which are un-Indian in nature and therefore I say even though the phraseology is there even though the English phraseology is there, what of it? Let it be there, but is it un-Indian for that matter? Our difficulties are there in this Constitution and all those problems that we have to solve have been given in this Constitution and a certain line of conduct for the governance of this country has been laid down in the Constitution. Therefore, I say it is not un-Indian.

My friend Mr. T. T. Krishnamachari was rather apologetic about this centralisation business and about the Fundamental Rights. He said, "Yes, yes, looking to our past history, we are very sure on that point". I am not at all apologetic about it. Whatever you have decided, Mr. Krishnamachari, in your wisdom, whatever the Drafting Committee and Dr. Ambedkar have done, is just the right thing for us and it is the only thing which can save us from anarchy. Therefore, I say that those who criticise this point in this spirit are not justified in doing so.

Where is the spirit of this Constitution? The point is who is to work this Constitution? Will it be a clan, honest, pure, well-integrated political party or will it be a rabble that will administer this Constitution? Today I am seeing before my very eyes the great national organisation which the Father of the Nation created, in a disintegrating process. The question is who shall come today and take the torch and unite once again this great organisation which made one of the most wonderful Revolutions in human history, the freedom of the country, by non-violent means, of course under the inspiration of a superman, of course under the inspiration of a man who comes only once every two thousand years. But then what does the future hold for us? If the Congress is permitted to disintegrate, if the Congress is permitted to be spoiled by the self-seeks, then I tell you, even a better Constitution will not be able to work its way here in this country. Therefore, today somehow I feel that there is only one way to work this Constitution and that one way is that our great Prime Minister should resign from his office, should come back and accept the Presidentship of the Indian National Congress and thereby inspire a new confidence in the people and thereby create a situation in which it would be easy to work the Constitution.

(Mr. Tajamul Husain rose to speak)

Mr. President : We shall go on with the discussion for another seven minutes during which I want to give an opportunity to speak to three or four Members.

Shri Raj Bahadur (Rajasthan) : Mr. President, Sir, I am grateful to you for giving me this opportunity to associate myself with the high and well-deserved tributes that have been showered upon your good self, upon the Drafting Committee and the members of the staff of the Constituent Assembly. This is an occasion of the greatest historical significance. I say of the greatest significance because it is for the first time in our history that the chosen representatives of the nation have gathered together and framed a Constitution for the country. It is doubtly so because the great and worthy leaders who brought freedom to our country have been the architects of our Constitution. Again for the first time in our history, Fundamental Rights, fundamental human rights, are being guaranteed and secured to the common citizen. I call the occasion great on account of these reasons. Sir, it is impossible in any human adventure of this type, namely that of framing a Constitution, to arrive at any degree of absolute unanimity. Unanimity may be possible perhaps only in a society of fools. So, if there are differences of opinion, it is only a sign of our intelligence, a sign that we are a thinking and thoughtful nation. It is impossible for all of us to agree on everything and on all points. The wonder is not that we have not been able to produce a better Constitution. The wonder is that we have been able to achieve and arrive at a degree of agreement that is incorporated in the Constitution. I would submit most respectfully that so far as the people of the Indian States are concerned, it is a matter of the highest gratification for all us. When we entered the portals of this great House we had lurking fears in our minds that the States would have to summon their own Constituent Assemblies as provided in the various covenants. Fortunately all such fears have proved unfounded. When the Constitution is now being finalised, when this stupendous task is coming to an end, it is a matter of deepest satisfaction to us that the same Constitution, which would be the symbol of our unity and the symbol of our national oneness and solidarity, shall apply to the States also. That does not, however mean that I have got no regrets altogether about the provisions of this Constitution. I regret certain provisions which relate to the States. I regret that because of the control of the centre that is sought to be imposed on the administration of these States for a period of ten years under article 371, a sort of double standard of democracy for the country

[Shri Raj Bahadur]

is going to be provided for the various units. There is one type of democracy being provided for the States in Part A and another type of democracy for the States mentioned in Part B. Here I may give expression to the experience we have had in these States and State Unions. We have seen how in the States Unions the Ministries have been chosen by the States Ministry, the advisers and secretaries are appointed by the States Ministry, the day to day policies and programmes are controlled by the same Ministry,

The President rang the bell at this stage.

and yet the blame from the people is borne by Congress man of the local Congress organisation. I would simply add at the end that whatever be the merits or the demerits of this Constitution, every thing depends upon the working of it. As Bryce has said, "it is easy to transplant a Constitution but it is not easy to transplant the temperament that is needed for the working of it." So, let us in all humility remind ourselves of the words of the great American statesman Benjamin Franklin, which I would humbly commend to all inside and outside this House—"Let us prick the bubble of our vanity. Let us doubt our own infallibility." None of us is infallible. This Constitution, whatever be its merit or demerit, is, without the least shadow of a doubt a workable constitution. The limitations of this Constitution are the limitations of our peculiar circumstances, its achievements are the achievements of this generation—the generation that led the country from the slavery unto freedom. I therefore hail it as a great achievement for our leaders. If we work the Constitution in the spirit of the preamble, I am sure this country of ours will have a great future.

Mr. Tajamul Husain (Bihar : Muslim) : Mr. President, Sir, we have been criticised for taking a long time for the framing of this Constitution. I would like to remind my critics that two Dominions started at or about the same time to frame their Constitution. We have finished, and the other has hardly yet begun.

Now, Sir, nothing in this world is perfect. Nobody says that we have got a perfect Constitution but it is the best that could possible be produced. I doubt if anyone else could have produced a better one. In my own opinion, this is a model Constitution. The judiciary will be independent; we shall have liberty, equality and fraternity; we have now a united India; the Princely order has gone; the minority question has been solved; there is no reservation of seats; no separate electorates; untouchability has been abolished. The credit for producing such a wonderful Constitution goes, Sir, to all of us in general because we, the Members of this House, extended our fullest co-operation to you, Sir. We were short in our speeches. We never tried to obstruct. We followed the procedure laid down by you. But I would like to mention the names of those who were mainly responsible for producing this Constitution in such a short time first and foremost, I will mention your name. You guided and conducted the proceedings of this House in a most remarkable and effective manner. You tactfully handled difficult situations. You were a mode of integrity and trustworthiness and your manner towards us was sympathetic.....

Mr. President : Better leave that alone.

Mr. Tajamul Husain : You were kind and gentle in the extreme. You are the fittest person to occupy this exalted Chair. In your absence, Dr. Mookerjee occupied the Chair and conducted the proceedings in a dignified manner. The credit for framing this Constitution goes to the Law Minister. He is a genius. He knows everything about all the Laws and Constitutions of the world. What he does not know is not worth knowing. He has worked very hard from the beginning to end in spite of his indifferent health. Due to his ceaseless labour, this remarkable Constitution has been framed. We owe a debt of gratitude to our Leader, the Prime Minister. He has raised the prestige of India. His charming personality is irresistible wherever he goes. He has on many

occasions come to our rescue when we were confronted with difficult and knotty problems, our Deputy Prime Minister has proved himself to be a strong and able administrator. He has been able to do things which nobody else could have done. He has obliterated the Princely order. He has done away with separate electorates. Now we can truly say that there is equality, fraternity and liberty in India. Last but not least is your staff, Sir, the spade work has been done by them; they have worked much harder than many of us; they have worked from early in the morning till midnight. In spite of some defects it is a unique and a remarkable Constitution and we should be proud of it. I shall now deal with a few defects. I have got only two.

(At this stage the President's bell rang.)

I will speak of at least one, Sir,

(The Bell was rung again).

I have been ordered by the Honourable the President to close my speech. I shall say no more but still I say that it is the best Constitution. There are two defects but they are worth mentioning and I do not want to mention it.

Shri Kamaleshwari Prasad Yadav (Bihar : General) : *[Mr. President, many honourable members here have expressed their great disappointment with this constitution and have remarked that it is nothing but a fantastic mixture of the different Constitutions of the World. But, Sir, I am not aware of any constitution nor of any country which has not made use of the good provisions of the other constitutions. Perhaps no country will ignore to do so. We too have therefore taken some such selected provisions, as appeared to us to be useful, from other constitutions of the World. Our Constitution contains many note worthy features. It lays down that India shall be a Union of States and that there will be one official language for the whole of the Union; it provides for the abolition of untouchability—a great sin—that has been tarnishing the name of our country. We are proud to have embodied such provisions in our Constitution. The provision regarding adult franchise surpasses those of Australia, Canada and other countries. The same thing applies in case of the provisions regarding citizenship. Under the able leadership of Pandit Jawaharlal Nehru, we have made our State a secular one and have thereby maintained a very high ideal. There was a time Sir, when the whole of Asia was looking to Japan but today the eyes of the whole of Asia are fixed towards India. They are watching if we are making any discrimination or not in our treatment to the citizens on the ground of religion, caste, language and race; they are keenly watching the progress we are making towards achieving our ideals.

Now coming to the shortcoming in the Constitution, the omission of a reference to the Father of the Nation—Respected Bapu—strikes me the most. It was Bapu who showed us the way, taught us to walk, moulded us to give the lessons of truth and non-violence. He taught us to make sacrifices. It is because of him that we have achieved our freedom; have been able to form this Assembly and to prepare the Constitution that we are going to adopt and enforce throughout the country. Really it is a very pity that we have not made any mention of him in the Constitution.

There should be no Legislative Councils in the small Provinces that have little income. I fail to understand why provision for Legislative Councils has been made for these small Provinces. In the Legislative Assembly of Bihar a unanimous resolution was adopted to the effect that there should be no Legislative Council in Bihar. But that unanimous decision has been reversed there. We could have made some other provision to carry out our idea that experts and learned people must be brought into the Legislatures. We could have provided for their inclusion in the Legislature for a limited period of time by

*[] Translation of Hindustani speech.

[Shri Kamaleshwari Prasad Yadav]

the way of nomination with powers to express their views and to participate in the debate but not to vote. The words "the State shall endeavour to" or "the State shall take steps" have been used in all articles from 40 to 51 under the Directive Principles. So far the body of these articles is concerned they appear very attractive indeed but there is no life in them. Whenever one is unwilling to do something or wants to evade it, he just says "I shall try". The very motive seems to me to be behind the words "the State shall endeavour to" used in the articles under reference. The same thing can be said in regard to the provisions relating to prohibition. We have not put a complete stop to the slaughter of cows. The appointment of a Commission provided in article 340 to investigate the condition of the backward classes, must be made within six months of the commencement of the Constitution for the problem is a serious one and unless they are brought at par with the advanced classes, the country can make no progress.

Lastly I would draw your attention, Sir, to the growing spirit of provincialism in the country. The bigger and more advanced Provinces want to devour the smaller and less advanced one. For instance I may mention the case of Bihar. All the profit in respect of the mineral products of the Province is being drained away to Calcutta and Bombay. Something should be done to put an stop to it.]

The Honourable Dr. B. R. Ambedkar : Sir, looking back on the work of the Constituent Assembly it will now be two years, eleven months and seventeen days since it first met on the 9th of December 1946. During this period the Constituent Assembly has altogether held eleven sessions. Out of these eleven sessions the first six were spent in passing the Objectives Resolution and the consideration of the Reports of Committees on Fundamental Rights, on Union Constitution, on Union Powers, on Provincial Constitution, on Minorities and on the Scheduled Areas and Scheduled Tribes. The seventh, eighth, ninth, tenth and the eleventh sessions were devoted to the consideration of the Draft Constitution. These eleven sessions of the Constituent Assembly have consumed 165 days. Out of these, the Assembly spent 114 days for the consideration of the Draft Constitution.

Coming to the Drafting Committee, it was elected by the Constituent Assembly on 29th August 1947. It held its first meeting on 30th August. Since August 30th it sat for 141 days during which it was engaged in the preparation of the Draft Constitution. The Draft Constitution, as prepared by the Constitutional Adviser as a text for the Drafting Committee to work upon, consisted of 243 articles and 13 Schedules. The first Draft Constitution as presented by the Drafting Committee to the Constituent Assembly contained 315 articles and 8 Schedules. At the end of the consideration stage, the number of articles in the Draft Constitution increased to 386. In its final form, the Draft Constitution contains 395 articles and 8 Schedules. The total number of amendments to the Draft Constitution tabled was approximately 7,635. Of them, the total number of amendments actually moved in the house were 2,473.

I mention these facts because at one stage it was being said that the Assembly had taken too long a time to finish its work, that it was going on leisurely and wasting public money. It was said to be a case of Nero fiddling while Rome was burning. Is there any justification for this complaint? Let us note the time consumed by Constituent Assemblies in other countries appointed for framing their Constitutions. To take a few illustrations, the American Convention met on May 25th, 1787 and completed its work on September 17, 1787 *i.e.*, within four months. The Constitutional Convention of Canada met on the 10th October 1864 and the Constitution was passed into

law in March 1867 involving a period of two years and five months. The Australian Constitutional Convention assembled in March 1891 and the Constitution became law on the 9th July 1900, consuming a period of nine years. The South African Convention met in October 1908 and the Constitution became law on the 20th September 1909 involving one years labour. It is true that we have taken more time than what the American or South African Conventions did. But we have not taken more time than the Canadian Convention and much less than the Australian Convention. In making comparisons on the basis of time consumed, two things must be remembered. One is that the Constitutions of America, Canada, South Africa and Australia are much smaller than ours. Our Constitution as I said contains 395 articles while the American has just seven articles, the first four of which are divided into sections which total up to 21, the Canadian has 147, Australian 128 and South African 153 sections. The second thing to be remembered is that the makers of the Constitutions of America, Canada, Australia and South Africa did not have to face the problem of amendments. They were passed as moved. On the other hand, this Constituent Assembly had to deal with as many as 2,473 amendments. Having regard to these facts the charge of dilatoriness seems to me quite unfounded and this Assembly may well congratulate itself for having accomplished so formidable a task in so short a time.

Turning to the quality of the work done by the Drafting Committee, Mr. Naziruddin Ahmed felt it his duty to condemn it outright. In his opinion, the work done by the Drafting Committee is not only not worthy of commendation, but is positively below par. Everybody has a right to have his opinion about the work done by the Drafting Committee and Mr. Naziruddin is welcome to have his own. Mr. Naziruddin Ahmed thinks he is a man of greater talents than any member of the Drafting Committee. The Drafting Committee does not wish to challenge his claim. On the other hand, the Drafting Committee would have welcomed him in their midst if the Assembly had thought him worthy of being appointed to it. If he had no place in the making of the Constitution it is certainly not the fault of the Drafting Committee.

Mr. Naziruddin Ahmed has coined a new name for the Drafting Committee evidently to show his contempt for it. He calls it a Drafting Committee. Mr. Naziruddin must no doubt be pleased with his hit. But he evidently does not know that there is a difference between drift without mastery and drift with mastery. If the Drafting Committee was drifting, it was never without mastery over the situation. It was not merely angling with the off chance of catching a fish. It was searching in known waters to find the fish it was after. To be in search of something better is not the same as drifting. Although Mr. Naziruddin Ahmed did not mean it as a compliment to the Drafting Committee, I take it as a compliment to the Drafting Committee. The Drafting Committee would have been guilty of gross dereliction of duty and of a false sense of dignity if had not shown the honesty and the courage to withdraw the amendments which it thought faulty and substitute what it thought was better. If it is a mistake, I am glad the Drafting Committee did not fight shy of admitting such mistakes and coming forward to correct them.

I am glad to find that with the exception of a solitary member, there is a general consensus of appreciation from the members of the Constituent Assembly of the work done by the Drafting Committee. I am sure the Drafting Committee feels happy to find this spontaneous recognition of its labours expressed in such generous terms. As to the compliments that have been showered upon me both by the members of the Assembly as well as by my colleagues of the Drafting Committee I feel so overwhelmed that I cannot find adequate words to express fully my gratitude to them. I came into the Constituent Assembly with no greater aspiration than to safeguard the interests of the Scheduled Castes. I had not the remotest idea that I would be called upon to undertake more responsible

[The Honourable Dr. B.R. Ambedkar]

functions. I was therefore greatly surprised when the Assembly elected me to the Drafting Committee. I was more than surprised when the Drafting Committee elected me to be its Chairman. There were in the Drafting Committee men bigger, better and more competent than myself such as my friend Sir Alladi Krishnaswami Ayyar. I am grateful to the Constitution Assembly and the Drafting Committee for reposing in me so much trust and confidence and to have chosen me as their instrument and given me this opportunity of serving the country. (*Cheers.*)

The credit that is given to me does not really belong to me. It belongs partly to Sir B. N. Rau, the Constitutional Adviser to the Constituent Assembly who prepared a rough draft of the Constitution for the consideration of the Drafting Committee. A part of the credit must go to the members of the Drafting Committee who, as I have said, have sat for 141 days and without whose ingenuity to devise new formulae and capacity to tolerate and to accommodate different points of view, the task of framing the Constitution could not have come to so successful a conclusion. Much greater share of the credit must go to Mr. S. N. Mukherjee, the Chief Draftsman of the Constitution. His ability to put the most intricate proposals in the simplest and clearest legal form can rarely be equalled, nor his capacity for hard work. He has been an acquisition to the Assembly. Without his help, this Assembly would have taken many more years to finalise the Constitution. I must not omit to mention the members of the staff working under Mr. Mukherjee. For, I know how hard they worked and how long they have toiled sometimes even beyond midnight. I want to thank them all for their effort and their co-operation. (*Cheers.*)

The task of the Drafting Committee would have been a very difficult one if this Constituent Assembly has been merely a motley crowd, a tasseled pavement without cement, a black stone here and a white stone there in which each member or each group was a law unto itself. There would have been nothing but chaos. This possibility of chaos was reduced to nil by the existence of the Congress Party inside the Assembly which brought into its proceedings a sense of order and discipline. It is because of the discipline of the Congress Party that the Drafting Committee was able to pilot the Constitution in the Assembly with the sure knowledge as to the fate of each article and each amendment. The Congress Party is, therefore, entitled to all the credit for the smooth sailing of the Draft Constitution in the Assembly.

The proceedings of this Constituent Assembly would have been very dull if all members had yielded to the rule of party discipline. Party discipline, in all its rigidity, would have converted this Assembly into a gathering of 'yes' men. Fortunately, there were rebels. They were Mr. Kamath, Dr. P.S. Deshmukh, Mr. Sidhva, Prof. Sexena and Pandit Thakur Das Bhargava. Along with them I must mention Prof. K. T. Shah and Pandit Hriday Nath Kunzru. The points they raised were mostly ideological. That I was not prepared to accept their suggestions, does not diminish the value of their suggestions, nor lessen the service they have rendered to the Assembly in enlivening its proceedings. I am grateful to them. But for them, I would not have had the opportunity which I got for expounding the principles underlying the Constitution which was more important than the mere mechanical work of passing the Constitution.

Finally, I must thank you Mr. President for the way in which you have conducted the proceedings of this Assembly. The courtesy and the consideration which you have shown to the Members of the Assembly can never be forgotten by those who have taken part in the proceedings of this Assembly. There were occasions when the amendments of the Drafting Committee were sought to be barred on grounds purely technical in their nature. Those were very anxious

moments for me. I am, therefore, specially grateful to you for not permitting legalism to defeat the work of Constitution making.

As much defence as could be offered to the Constitution has been offered by my friends Sir Alladi Krishnaswami Ayyar and Mr. T. T. Krishnamachari. I shall not therefore enter into the merits of the Constitution. Because I feel, however good a Constitution may be, it is sure to turn out bad because those who are called to work it, happen to be a bad lot. However, bad a Constitution may be, it may turn out to be good if those who are called to work it, happen to be a good lot. The working of a Constitution does not depend wholly upon the nature of the Constitution. The Constitution can provide only the organs of State such as the Legislature, the executive and the Judiciary. The factors on which the working of those organs of the State depend are the people and the political parties they will set up as their instruments to carry out their wishes and their politics. Who can say how the people of India and their parties will behave? Will they uphold constitutional methods of achieving their purposes or will they prefer revolutionary methods of achieving them? If they adopt the prophet to say that it will fail. It is, therefore, futile to pass any judgment upon the Constitution without reference to the part which the people and their parties are likely to pay.

The condemnation of the Constitution largely comes from two quarters, the Communist Party and the Socialist Party. Why do they condemn the Constitution? Is it because it is really a bad Constitution? I venture to say 'no'. The Communist Party wants a Constitution based upon the principle of the Dictatorship of the Proletariat. They condemn the Constitution because it is based upon parliamentary democracy. The Socialists want two things. The first thing they want is that if they come in power, the Constitution must give them the freedom to nationalize or socialize all private property without payment of compensation. The second thing that the Socialists want is that the Fundamental Rights mentioned in the Constitution must be absolute and without any limitations so that if their Party fails to come into power, they would have the unfettered freedom not merely to criticize, but also to overthrow the State.

These are the main grounds on which the Constitution is being condemned. I do not say that the principle of parliamentary democracy is the only ideal form of political democracy. I do not say that the principle of no acquisition of private property without compensation is so sacrosanct that there can be no departure from it. I do not say that Fundamental Rights can never be absolute and the limitations set upon them can never be lifted. What I do say is that the principles embodied in the Constitution are the views of the present generation or if you think this to be an over-statement, I say they are the views of the members of the Constituent Assembly. Why blame the Drafting Committee for embodying them in the Constitution? I say why blame even the Members of the Constituent Assembly? Jefferson, the great American statesman who played so great a part in the making of the American Constitution, has expressed some very weighty views which makers of Constitution, can never afford to ignore. In one place, he has said:—

“We may consider each generation as a distinct nation, with a right, by the will of the majority, to bind themselves, but none to bind the succeeding generation, more than the inhabitants of another country”.

In another place, he had said :

“The idea that institutions established for the use of the nation cannot be touched or modified, even to make them answer their end, because of rights gratuitously supposed in those employed to manage them in the trust for the public, may perhaps be a salutary provision against the abuses of a monarch, but is most absurd against

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the nation itself. Yet our lawyers and priests generally inculcate this doctrine, and suppose that preceding generations held the earth more freely than we do; had a right to impose laws on us, unalterable by ourselves, and that we, in the like manner, can make laws and impose burdens on future generations, which they will have no right to alter; in fine, that the earth belongs to the dead and not the living.”

I admit that what Jefferson has said is not merely true, but is absolutely true. There can be no question about it. Had the Constituent Assembly departed from this principle laid down by Jefferson it would certainly be liable to blame, even to condemnation. But I ask, has it? Quite the contrary. One has only to examine the provision relating to the amendment of the Constitution. The Assembly has not only refrained from putting a seal of finality and infalibility upon this Constitution by denying to the people the right to amend the Constitution as in Canada or by making the amendment of the Constitution subject to the fulfilment of extraordinary terms and conditions as in America or Australia, but has provided a most facile procedure for amending the Constitution. I challenge any of the critics of the Constitution to prove that any Constituent Assembly anywhere in the world has, in the circumstances in which this country finds itself, provided such a facile procedure for the amendment of the Constitution. If those who are dissatisfied with the Constitution have only to obtain a 2/3 majority and if they cannot obtain even a two-thirds majority in the Parliament elected on adult franchise in their favour, their dissatisfaction with the Constitution cannot be deemed to be shared by the general public.

There is only one point of Constitutional import to which I propose to make a reference. A serious complaint is made on the ground that there is too much of centralization and that the States have been reduced to Municipalities. It is clear that this view is not only an exaggeration, but is also founded on a misunderstanding of what exactly the Constitution contrives to do. As to the relation between the Centre and the States, it is necessary to bear in mind the fundamental principle on which it rests. The basic principle of Federalism is that the Legislative and Executive authority is partitioned between the Centre and the States not by any law to be made by the Centre but by the Constitution itself. This is what the Constitution does. The States under our Constitution are in no way dependent upon the Centre for their legislative or executive authority. The Centre and the States are co-equal in this matter. It is difficult to see how such a Constitution can be called centralism. It may be that the Constitution assigns to the Centre too large a field for the operation of its legislative and executive authority than is to be found in any other Federal Constitution. It may be that the residuary powers are given to the Centre and not to the States. But these features do not form the essence of federalism. The chief mark of federalism as I said lies in the partition of the legislative and executive authority between the Centre and the Units by the Constitution. This is the principle embodied in our Constitution. There can be no mistake about it. It is, therefore, wrong to say that the States have been placed under the Centre. The Centre cannot by its own will alter the boundary of that partition. Nor can the judiciary. For as has been well said :

“Courts may modify, they cannot replace. They can revise earlier interpretation as new arguments, new points of view are presented, they can shift the dividing line in marginal cases, but there are barriers they cannot pass, definite assignments of power they cannot reallocate. They can give a broadening construction of existing powers, but they cannot assign to one authority powers explicitly granted to another.”

The first charge of centralisation defeating federalism must therefore fall.

The second charge is that the Centre has been given the power to override the States. This charge must be admitted. But before condemning the Constitution for containing such overriding powers, certain considerations must be borne in mind. The first is that these overriding powers do not form the normal feature of the Constitution. Their use and operation are expressly confined to emergencies only. The second consideration is : Could we avoid giving overriding powers to the Centre when an emergency has arisen? Those who do not admit the justification for such overriding powers to the Centre even in an emergency do not seem to have a clear ideal of the problem which lies at the root of the matter. The problem is so clearly set out by a writer in that well-known magazine "The Round Table" in its issue of December 1935 that I offer no apology for quoting the following extract from it. Says the writer:

"Political systems are a complex of rights and duties resting ultimately on the question, to whom, or to what authority, does the citizen owe allegiance. In normal affairs the question is not present, for the law works smoothly, and a man, goes about his business obeying one authority in this set of matters and another authority in that. But in a moment of crisis, a conflict of claims may arise, and it is then apparent that ultimate allegiance cannot be divided. The issue of allegiance cannot be determined in the last resort by a juristic interpretation of statutes. The law must conform to the facts or so much the worse for the law. When all formalism is stripped away, the bare question is, what authority commands the residual loyalty of the citizen. Is it the Centre or the Constituent State?"

The solution of this problem depends upon one's answer to this question which is the crux of the problem. There can be no doubt that in opinion of the vast majority of the people, the residual loyalty of the citizen in an emergency must be to the Centre and not to the Constituent States. For it is only the Centre which can work for a common end and for the general interests of the country as a whole. Herein lies the justification for giving to the Centre certain overriding powers to be used in an emergency. And after all what is the obligation imposed upon the Constituent States by these emergency powers? No more than this—that in an emergency, they should take into consideration alongside their own local interest, the opinions and interests of the nation as a whole. Only those who have not understood the problem, can complain against it.

Here I could have ended. But my mind is so full of the future of our country that I feel I ought to take this occasion to give expression to some of my reflections thereon. On 26th January 1950, India will be an independent country (*Cheers*). What would happen to her independence? Will she maintain her independence or will she lose it again? This is the first thought that comes to my mind. It is not that India was never an independent country. The point is that she once lost the independence she had. Will she lose it a second time? It is this thought which makes me most anxious for the future. What perturbs me greatly is the fact that not only India has once before lost her independence, but she lost it by the infidelity and treachery of some of her own people. In the invasion of Sind by Mahommed-Bin-Kasim, the military commanders of King Dahar accepted bribes from the agents of Mahommed-Bin-Kasim and refused to fight on the side of their King. It was Jaichand who invited Mahommed Gohri to invade India and fight against Prithvi Raj and promised him the help of himself and the Solanki Kings. When Shivaji was

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fighting for the liberation of Hindus, the other Maratha noblemen and the Rajput Kings were fighting the battle on the side of Moghul Emperors. When the British were trying to destroy the Sikh Rulers, Gulab Singh, their principal commander sat silent and did not help to save the Sikh Kingdom. In 1857, when a large part of India had declared a war of independence against the British, the Sikhs stood and watched the event as silent spectators.

Will history repeat itself? It is this thought which fills me with anxiety. This anxiety is deepened by the realization of the fact that in addition to our old enemies in the form of castes and creeds we are going to have many political parties with diverse and opposing political creeds. Will Indians place the country above their creed or will they place creed above country? I do not know. But this much is certain that if the parties place creed above country, our independence will be put in jeopardy a second time and probably be lost for ever. This eventuality we must all resolutely guard against. We must be determined to defend our independence with the last drop of our blood. (*Cheers.*)

On the 26th of January 1950, India would be a democratic country in the sense that India from that day would have a government of the people, by the people and for the people. The same thought comes to my mind. What would happen to her democratic Constitution? Will she be able to maintain it or will she lose it again. This is the second thought that comes to my mind and makes me as anxious as the first.

It is not that India did not know what is Democracy. There was a time when India was studded with republics, and even where there were monarchies, they were either elected or limited. They were never absolute. It is not that Indian did not know Parliaments or Parliamentary Procedure. A study of the Buddhist Bhikshu Sanghas discloses that not only there were Parliaments—for the Sanghas were nothing but Parliaments—but the Sanghas knew and observed all the rules of Parliamentary Procedure known to modern times. They had rules regarding seating arrangements, rules regarding Motions, Resolution, Quorum, Whip, Counting of Votes, Voting by Ballot, Censure Motion, Regularization, *Res Judicata*, etc. Although these rules of Parliamentary Procedure were applied by the Buddha to the meetings of the Sanghas, he must have borrowed them from the rules of the Political Assemblies functioning in the country in this time.

This democratic system India lost. Will she lose it a second time? I do not know. But it is quite possible in a country like India—where democracy from its long disuse must be regarded as something quite new—there is danger of democracy giving place to dictatorship. It is quite possible for this new born democracy to retain its form but give place to dictatorship in fact. If there is a landslide, the danger of the second possibility becoming actuality is much greater.

If we wish to maintain democracy not merely in form, but also in fact, what must we do? The first thing in my judgment we must do is to hold fast to constitutional methods of achieving our social and economic objectives. It means we must abandon the bloody methods of revolution. It means that we must abandon the method of civil disobedience, non-cooperation and satyagraha. When there was no way left for constitutional methods for achieving economic and social objectives, there was a great deal of justification for unconstitutional methods. But where constitutional methods are open, there can be no justification for these unconstitutional methods. These methods are nothing but the Grammar of Anarchy and the sooner they are abandoned, the better for us.

The Second thing we must do is to observe the caution which John Stuart Mill has given to all who are interested in the maintenance of democracy, namely, not “to lay their liberties at the feet of even a great man, or to trust him with powers which enable him to subvert their institutions”. There is nothing wrong in being grateful to great men who have rendered life-long services to the country. But there are limits to gratefulness. As has been well said by the Irish Patriot Daniel O’Connell, no man can be grateful at the cost of his honour, no woman can be grateful at the cost of her chastity and no nation can be grateful at the cost of its liberty. This caution is far more necessary in the case of India than in the case of any other country. For in India, Bhakti or what may be called the path of devotion or hero-worship, plays a part in its politics unequalled in magnitude by the part it plays in the politics of any other country in the world. Bhakti in religion may be a road to the salvation of the soul. But in politics, Bhakti or hero-worship is a sure road to degradation and to eventual dictatorship.

The third thing we must do is not to be content with mere political democracy. We must make our political democracy a social democracy as well. Political democracy cannot last unless there lies at the base of it social democracy. What does social democracy mean? It means a way of life which recognizes liberty, equality and fraternity as the principles of life. These principles of liberty, equality and fraternity are not to be treated as separate items in a trinity. They form a union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy. Liberty cannot be divorced from equality, equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity. Without equality, liberty would produce the supremacy of the few over the many. Equality without liberty would kill individual initiative. Without fraternity, liberty and equality could not become a natural course of things. It would require a constable to enforce them. We must begin by acknowledging the fact that there is complete absence of two things in Indian Society. One of these is equality. On the social plane, we have in India a society based on the principle of graded inequality which means elevation for some and degradation for others. On the economic plane, we have a society in which there are some who have immense wealth as against many who live in abject poverty. On the 26th of January 1950, we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality. In politics we will be recognizing the principle of one man one vote and one vote one value. In our social and economic life, we shall, by reason of our social and economic structure, continue to deny the principle of one man one value. How long shall we continue to live this life of contradictions? How long shall we continue to deny equality in our social and economic life? If we continue to deny it for long, we will do so only by putting our political democracy in peril. We must remove this contradiction at the earliest possible moment or else those who suffer from inequality will blow up the structure of political democracy which this Assembly has so laboriously built up.

The second thing we are wanting is recognition of the principle of fraternity. What does fraternity mean? Fraternity means a sense of common brotherhood of all Indians—if Indians being one people. It is the principle which gives unity and solidarity to social life. It is a difficult thing to achieve. How difficult it is, can be realized from the story related by James Bryce in this volume on American Commonwealth about the United States of America.

The story is—I propose to recount it in the words of Bryce himself—that—

“Some years ago the American Protestant Episcopal Church was occupied at its triennial Convention in revising its liturgy. It was thought desirable to introduce among the short sentence prayers a prayer for the whole people, and an eminent New England

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divine proposed the words 'O Lord, bless our nation'. Accepted one afternoon, on the spur of the moment, the sentence was brought up next day for reconsideration, when so many objections were raised by the laity to the word 'nation,' as importing too definite a recognition of national unity, that it was dropped, and instead there were adopted the words 'O Lord, bless these United States'."

There was so little solidarity in the U.S.A. at the time when this incident occurred that the people of America did not think that they were a nation. If the people of the United State could not feel that they were a nation, how difficult it is for Indians to think that they are a nation. I remember the days when politically-minded Indians resented the expression "the people of India". They preferred the expression "the Indian nation." I am of opinion that in believing that we are a nation, we are cherishing a great delusion. How can people divided into several thousands of castes be a nation? The sooner we realize that we are not as yet a nation in the social and psychological sense of the world, the better for us. For then only we shall realize the necessity of becoming a nation and seriously think of ways and means of realizing the goal. The realization of this goal is going to be very difficult—far more difficult than it has been in the United States. The United States has no caste problem. In India there are castes. The castes are anti-national. In the first place because they bring about separation in social life. They are antinational also because they generate jealousy and antipathy between caste and caste. But we must overcome all these difficulties if we wish to become a nation in reality. For fraternity can be a fact only when there is a nation. Without fraternity equality and liberty will be no deeper than coats of paint.

These are my reflections about the tasks that lie ahead of us. They may not be very pleasant to some. But there can be no gainsaying that political power in this country has too long been the monopoly of a few and the many are not only beasts of burden, but also beasts of prey. This monopoly has not merely deprived them of their chance of betterment, it has sapped them of what may be called the significance of life. These down-trodden classes are tired of being governed. They are impatient to govern themselves. This urge for self-realization in the down-trodden classes must not be allowed to devolve into a class struggle or class war. It would lead to a division of the House. That would indeed be a day of disaster. For, as has been well said by Abraham Lincoln, a House divided against itself cannot stand very long. Therefore the sooner room is made for the realization of their aspiration, the better for the few, the better for the country, the better for the maintenance for its independence and the better for the continuance of its democratic structure. This can only be done by the establishment of equality and fraternity in all spheres of life. That is why I have laid so much stress on them.

I do not wish to weary the House any further. Independence is no doubt a matter of joy. But let us not forget that this independence has thrown on us great responsibilities. By independence, we have lost the excuse of blaming the British for anything going wrong. If hereafter things go wrong, we will have nobody to blame except ourselves. There is great danger of things going wrong. Times are fast changing. People including our own are being moved by new ideologies. They are getting tired of Government by the people. They are prepared to have Government for the people and are indifferent whether it is Government of the people and by the people. If we wish to preserve the Constitution in which we have sought to enshrine the principle of Government

of the people, for the people and by the people, let us resolve not be tardy in the recognition of the evils that lie across our path and which induce people to prefer Government for the people to Government by the people, nor to be weak in our initiative to remove them. That is the only way to serve the country. I know of no better.

Mr. President : The House will adjourn till Ten of the clock tomorrow morning when we shall take up the voting on the motion which was moved by Dr. Ambedkar.

The Assembly then adjourned till Ten of the Clock on Saturday, the 26th November, 1949.

CONSTITUENT ASSEMBLY OF INDIA

Saturday, the 26th November 1949

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.

ANNOUNCEMENT *RE.* STATES

Mr. President : I understand that Sardar Patel has to make some announcement regarding the position of the States. Before putting the motion formally to vote I would ask him to make the statement.

The Honourable Sardar Vallabhbhai J. Patel (Bombay : General) : Sir, I have a short announcement to make. As honourable Members will recall, in the course of the detailed statement I made before this House on the 12th October on the position of the States under the new Constitution, I appraised honourable Members of the procedure we contemplated regarding the acceptance of the Constitution by the States. I am glad to inform the House that all the nine States specified in Part B of the First Schedule of the Constitution, including the State of Hyderabad, have signified, in the manner indicated in my statement made on October 12th, their acceptance on the Constitution which the House is now going to adopt.

DRAFT CONSTITUTION—(*Contd.*)

Shri B. Das (Orissa : General) : Sir, I would like to know if you are going to make a pronouncement as to whether *Vandemataram* should be the national song and what should be our national anthem.

Mr. President : I am not going to make any announcement now. That matter will be considered later on, if necessary, by the assembly where we meet in January.

I have received two messages from two gentlemen, one of them who was a Member and the other who still continues to be a Member of the Assembly.

The first Message is from His excellency Shri Sri Prakasa :

“Offer hearty respectful felicitations solemn auspicious occasion putting the Presidential seal confirming nation’s self-wrought Charter of Liberty. Earnestly pray we prove worthy of freedom and loyal to Constitution spontaneously availing ourselves of opportunities afforded for country’s devoted service—Shri Prakasa”.

The second message is from Dr. Sachchidananda Sinha :

“If permissible kindly convey Assembly my message. Though privileged to inaugurate as First President its proceedings in December 1946 but not to take part in their closing tomorrow, due to continued ill-health. I have, with keenest interest and deepest sympathy followed the work of constitution making and remembering that nothing in this world is or can be perfect or please all and also the patent facts that the area to be covered was tremendous the population multitudinous of hundreds of millions with multiplicity of languages and conflicts of vast and varied interests, it is not at all surprising that there are several problems unsolved. But, to me, it is marvellous that so much unity and integrity should

[Mr. President]

have been evolved in almost all matters reflecting thereby highest credit on the good sense of the Assembly and no less redounding to you as highly tactful President. As the seniormost Member of the Assembly, I invoke Divine Mercy that your labours may be crowned with fullest success and that the ancient historic land of Bharat may again stand forth great and glorious in the scale of Nations—Sachchidananda Sinha”.

Shri Algu Rai Shastri (United Provinces : General) : *[Mr. President, before you resume the day’s work. I would like to know from you as to when and in which form the Hindi Translation of the Constitution would appear. I had suggested the other day that when we meet before the 26th January, we should give two or three days for general discussion of that translation and authenticate it. Are you going to consider this humble request of mine? You would recollect that you had yourself declared that the Constitution of our Nation would be framed in our own National Language but you have not yet made any definite announcement on this question. I would request that some announcement should be made in this respect. We can sit for two or three days and adopt the Constitution in our National Language. We should pass our Constitution in the language of the country. This language (English) is not the language of the people, it is not the language of the common man. I, therefore, request you in the name of India nationalism and in the name of Indian people to make a definite announcement in this respect.]

Mr. President : *[You would be aware that some articles have been adopted in the Constitution wherein it has been decided which would be the language for official use. Therein it has also been decided that for the next 15 years all official work at the Centre would be carried in English. And if it is considered necessary and expedient, Hindi may also find some place therein. At present perhaps it will not be possible to place the Constitution in Hindi before this House and to get it adopted. Besides this, the Constituent Assembly has itself passed a resolution directing me to publish the Hindi translation of the Constitution by the 26th of January. I am making arrangements for that and the translation would be published by the 26th of January.

I would also, as soon as possible get it translated and published in other languages. It is therefore not opportune to get the Constitution prepared in Hindi, discuss it and to adopt it here.]

Shri R. V. Dhulekar (United Provinces : General) : *[Will it be possible to get it signed by us, when the Constituent Assembly adopts it here?]

Mr. President : *[I do not know whether all the members of the Assembly would be prepared to accept the translation. It can be done after full consideration of every word and every phrase. This may perhaps take as much time as had been taken by the English version. So it does not seem to be possible. But the translation will be ready.]

Shri R. V. Dhulekar : *[My request is not that the translation should be adopted by the Assembly on the 26th January, but it should be decided that it would come into force from that day.]

Mr. President : *[That translation will be published on my behalf. The people would judge it for what it is worth.]

Before I formally put the motion which was moved by Dr. Ambedkar, I desire to say a few words.

I desire to congratulate the Assembly on accomplishing a task of such tremendous magnitude. It is not my purpose to appraise the value of the work that the Assembly has done or the merits or demerits of the Constitution which

*[] Translation of Hindustani speech.

it has framed. I am content to leave that to others and to posterity. I shall attempt only to point out some of its salient features and the method which we have pursued in framing the Constitution.

Before I do that, I would like to mention some facts which will show the tremendousness of the task with we undertook some three years ago. If you consider the population with which the Assembly has had to deal, you will find that it is more than the population of the whole of Europe minus Russia, being 319 millions are against 317 millions. The countries of Europe have never been able to join together or coalesce even in a Confederacy, much less under one unitary Government. Here, in spite of the size of the population and the country, we have succeeded in framing a Constitution which covers the whole of it. Apart from the size, there were other difficulties which were inherent in the problem itself. We have got many communities living in this country. We have got many languages prevalent in different parts of it. We have got other kinds of differences dividing the people in the different parts from one another. We had to make provision not only for areas which are advanced educationally and economically; we had also to make provision for backward people like the Tribes and for backward areas like the Tribal Areas. The communal problem had been one of the knottiest problem which the country has had before it for a pretty long time. The Second Round Table Conference which was attended by Mahatma Gandhi failed because the communal problem could not be solved. The subsequent history of the country is too recent to require narration here; but we know this that as a result, the country has had to be divided and we have lost two big portions in the north-east and north-west.

Another problem of great magnitude was the problem of the Indian States. When the British came to India, they did not conquer the country as a whole or at one stroke. They got bits of it from time to time. The bits which came into their direct possession and control came to be known as British India; but a considerable portion remained under the rule and control of the Indian Princes. The British thought at the time that it was not necessary or profitable for them to take direct control of those territories, and they allowed the old Rulers to continue subject to their suzerainty. But they entered into various kinds of treaties and engagements with them. We had something near six hundred States covering more than one-third of the territory of India and one-fourth of the population of the country. They varies in size from small tiny principalities to big States like Mysore, Hyderabad, Kashmir, etc. When the British decided to leave this country, they transferred power to us; but at the same time, they also declared that all the treaties and engagements they had with the princes had lapsed. The paramountcy which they had so long exercised and by which they could keep the Princes in order also lapsed. The Indian Government was then faced with the problem of tackling these States which had different traditions of rule, some of them having some form of popular representation in Assemblies and some having no semblance of anything like that, and governing completely autocratically.

As a result of the declaration that the treaties with the Princes and Paramountcy had lapsed, it became open to any Prince or any combination of Princes to assume independence and even to enter into negotiations with any foreign power and thus become islands of independent territory within the country. There were undoubtedly geographical and other compulsions which made it physically impossible for most of them to go against the Government of India but constitutionally it had become possible. The Constituent Assembly therefore had at the very beginning of its labours, to enter into negotiations with them to bring their representatives into the Assembly so that a constitution might be framed in consultation with them. The first efforts were successful

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and some of them did join this Assembly at an early stage but others hesitated. It is not necessary to pry into the secrets of what was happening in those days behind the scenes. It will be sufficient to state that by August 1947 when the Indian Independence Act came into force, almost all of them with two notable exceptions, Kashmir in the north and Hyderabad in the south, had acceded to India. Kashmir soon after followed the example of others and acceded. There were standstill agreements with all of them including Hyderabad which continued the *status quo*. As time passed, it became apparent that it was not possible at any rate for the smaller States to maintain their separate independence existence and then a process of integration with India started. In course of time not only have all the smaller States coalesced and become integrated with some province or other of India but some of the larger ones also have joined. Many of the States have formed Unions of their own and such Unions have become part of the Indian Union. It must be said to the credit of the Princes and the people of the States no less than to the credit of the States Ministry under the wise and far-sighted guidance of Sardar Vallabhbhai Patel that by the time we have been able to pass this Constitution, the States are now more or less in the same position as the Provinces and it has become possible to describe all of them including the Indian States and the Provinces as States in the Constitution. The announcement which has been made just now by Sardar Vallabhbhai Patel makes the position very clear, and now there is no difference between the States, as understood before, and the provinces in the New Constitution.

It has undoubtedly taken us three years to complete this work, but when we consider the work that has been accomplished and the number of days that we have spent in framing this Constitution, the details of which were given by the Honourable Dr. B. R. Ambedkar, yesterday, we have no reason to be sorry for the time spent.

It has enabled the apparently intractable problem of the States and the communal problem to be solved. What had proved insoluble at the Round Table Conference and had resulted in the division of the country has been solved with the consent of all parties concerned, and again under the wise guidance of Honourable Sardar Vallabhbhai Patel.

At first we were able to get rid of separate electorates which had poisoned our political life for so many years, but reservation of seats for the communities which enjoyed separate electorates before had to be conceded, although on the basis of their population and not as had been done in the Act of 1919 and the Act of 1935 of giving additional representation on account of the so-called historical and other superiority claimed by some of the communities. It has become possible only because the Constitution was not passed earlier that even reservation of seats has been given up by the communities concerned and so our Constitution does not provide for reservation of seats on communal basis, but for reservation only in favour of two classes of people in our population, namely, the depressed classes who are Hindus and the tribal people, on account of their backwardness in education and in other respects. I therefore see no reason to be apologetic about the delay.

The cost too which the Assembly has had to incur during its three years' existence is not too high when you take into consideration the factors going to constitute it. I understand that the expenses up to the 22nd of November come to Rs.63,96,729/-.

The method which the Constituent Assembly adopted in connection with the Constitution was first to lay down its 'terms of reference' as it were in the form of an Objective Resolution which was moved by Pandit Jawaharlal Nehru in as

inspiring speech and which constitutes now the Preamble to our Constitution. It then proceeded to appoint a number of committees to deal with different aspects of the Constitutional problem. Dr. Ambedkar mentioned the names of these Committees. Several of these had as their Chairman either Pandit Jawaharlal Nehru or Sardar Patel to whom thus goes the credit for the fundamentals of our Constitution. I have only to add that they all worked in a business-like manner and produced reports which were considered by the Assembly and their recommendations were adopted as the basis on which the draft of the Constitution had to be prepared. This was done by Mr. B. N. Rau, who brought to bear on his task a detailed knowledge of Constitutions of other countries and an extensive knowledge of the conditions of this country as well as his own administrative experience. The Assembly then appointed the Drafting Committee which worked on the original draft prepared by Mr. B. N. Rau and produced the Draft Constitution which was considered by the Assembly at great length at the second reading stage. As Dr. Ambedkar pointed out, there were not less than 7,635 amendments of which 2,473 amendments were moved. I am mentioning this only to show that it was not only the Members of the Drafting Committee who were giving their close attention to the Constitution, but other Members were vigilant and scrutinising the Draft in all its details. No wonder, that we had to consider not only each article in the Draft, but practically every sentence and sometimes, every word in every article. It may interest honourable Members to know that the public were taking great interest in its proceedings and I have discovered that not less than 53,000 visitors were admitted to the Visitors gallery during the period when the Constitution has been under consideration. In the result, the Draft Constitution has increased in size, and by the time it has been passed, it has come to have 395 articles and 8 schedules, instead of the 243 articles and 13 schedules of the original Draft of Mr. B. N. Rau. I do not attach much importance to the complaint which is sometimes made that it has become too bulky. If the provisions have been well thought out, the bulk need not disturb the equanimity of our mind.

We have now to consider the salient features of the Constitution. The first question which arises and which has been mooted is as to the category to which this Constitution belongs. Personally, I do not attach any importance to the label which may be attached to it—whether you call it Federal Constitution or Unitary Constitution or by any other name. It makes no difference so long as the Constitution serves our purpose. We are not bound to have a Constitution which completely and fully falls in line with known categories of Constitution in the world. We have to take certain facts of history in our own country and the Constitution has not to an inconsiderable extent been influenced by such realities as facts of history.

You are all aware that until the Round Table Conference of 1930, India was completely an Unitary Government, and the provinces derived whatever power they possessed from the Government of India. It was therefore the first time that the question of Federation in a practical form arose which would include not only the Provinces but also the many States that were in existence. The Constitution of 1935 provided for a Federation in which both the provinces of India and the States were asked to join. But the federal part of it could not be brought into operation, because terms on which the Princes could agree to join it could not be settled in spite of prolonged negotiation. And, when the war broke out, that part of the Constitution had practically to be abrogated.

In the present Constitution it has been possible not only to bring in practically all the States which fell within our geographical limits, but to integrate largest majority of them in India, and the Constitution as it stands practically makes no difference so far as the administration and the distribution of

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powers among the various organs of the State are concerned between what were the Provinces and what were Indian States before. They are all now more or less on the same footing and, as time passes, whatever little distinction still exists is bound to disappear. Therefore so far as labelling is concerned, we need not be troubled by it.

Well, the first and the most obvious fact which will attract any observer is the fact that we are going to have a Republic. India knew republics in the past olden days, but that was 2,000 years ago or more and those republics were small republics. We never had anything like the Republic which we are going to have now, although there were empires in those days as well as during the Mughal period which covered very large parts of the country. The President of the Republic will be an elected President. We never have had an elected Head of the State which covered such a large area of India. And it is for the first time that it becomes open to the humblest and the lowliest citizens of the country to deserve and become the President or the head of this big State which counts among the biggest States of the world today. This is not a small matter. But because we have an elected President, some of the problems which are of a very difficult nature have arisen. We have provided for the election of the President. We have provided for an elected legislature which is going to have supreme authority. In America, the legislature and the president are both elected and, there both have more or less equal powers—each in its or his own sphere, the President in the executive sphere and the legislature in the legislative sphere.

We considered whether we should adopt the American model or the British model where we have a hereditary king who is the fountain of all honour and power, but who does not actually enjoy any power. All the power rests in the Legislature to which the Ministers are responsible. We have had to reconcile the position of an elected Legislature and, in doing so, we have adopted more or less the position of the British Monarch for the President. This may or may not be satisfactory. Some people think too much power has been given to the President; others think that the President, being an elected President, should have even more powers than are given to him.

If you look at it from the point of view of the electorate which elects the Parliament and which elects the President, you will find that practically the entire adult population of the country joins in electing this Parliament and it is not only the members of the Parliament of India but also the Members of the Legislative Assemblies of the States who join in electing the President. It thus comes about that, while the Parliament and Legislative Assemblies are elected by the adult population of the country as a whole, the President is elected by representatives who represent the entire population twice over, once as representatives of the States and again as their representatives in the Central Parliament of the country. But although the President is elected by the same electorate as the Central and State Legislatures, it is as well that his position is that of a Constitutional President.

Then we come to the Ministers. They were of course responsible to the Legislature and tender advice to the president who is bound to act according to that advice. Although there are no specific provisions, so far as I know, in the Constitution itself making it binding on the President to accept the advice of his Ministers, it is hoped that the convention under which in England the King acts always on the advice of his Ministers will be established in this country also and, the President, not so much on account of the written word in the Constitution, but as the result of this very healthy convention, will become a Constitutional President in all matters.

The Central Legislature consists of two Houses known as the House of People and the Council of States which both together constitute the Parliament of India. In the Provinces, or States as they are now called, we shall have a Legislative Assembly in all of them except those which are mentioned in Parts C and D of Schedule I, but every one of them will not have a Second Chamber. Some of the provinces, whose representatives felt that a Second Chamber is required for them, have been provided with a Second Chamber. But there is a provision in the Constitution that if a province does not want such a Second Chamber to continue or if a province which has not got one wants to establish one, the wish has to be expressed through the Legislature by a majority of two-thirds of the members voting and by a majority of the total number of Members in the Legislative Assembly. So, even while providing some of the States with Second Chambers, we had provided also for their easy removal or for their easy establishment by making this kind of amendment of the Constitution not a Constitutional Amendment, but a matter of ordinary parliamentary legislation.

We have provided for adult suffrage by which the legislative assemblies in the provinces and the House of the People in the Centre will be elected. It is a very big step that we have taken. It is big not only because our present electorate is a very much smaller electorate and based very largely on property qualification, but it is also big because it involves tremendous numbers. Our population now is something like 320 millions if not more and we have found from experience gained during the enrolment of voters that has been going on in the provinces that 50 per cent. roughly representing the adult population. And on that basis we shall have not less than 160 million voters on our rolls. The work of organising election by such vast numbers is of tremendous magnitude and there is no other country where election on such a large scale has ever yet been held.

I will just mention to you some facts in this connection. The legislative assemblies in the provinces, it is roughly calculated, will have more than 3,800 members who will have to be elected in as many constituencies or perhaps a few less. Then there will be something like 500 members for the House of the People and about 220 Members for the Council of States. We shall thus have to provide for the election of more than 4,500 members and the country will have to be divided into something like 4,000 constituencies or so. I was the other day, as a matter of amusement, calculating what are electoral roll will look like. If you print 40 names on a page of foolscap size, we shall require something like 20 lakhs of sheets of foolscap size to print all the names of the voters, and if you combine the whole thing in one volume, the thickness of the volume will be something like 2200 yards. That alone gives us some idea of the vastness of the task and the work involved in finalising the rolls, delimiting Constituencies, fixing polling stations and making other arrangements which will have to be done between now and the winter of 1950-51 when it is hoped the elections may be held.

Some people have doubted the wisdom of adult franchise. Personally, although I look upon it as an experiment the result of which no one will be able to forecast today, I am not dismayed by it. I am a man of the village and although I have had to live in cities for a pretty long time, on account of my work, my roots are still there. I, therefore, know the village people who will constitute the bulk of this vast electorate. In my opinion, our people possess intelligence and commonsense. They also have a culture which the sophisticated people of today may not appreciate, but which is solid. They are not literate and do not possess the mechanical skill of reading and writing. But, I have no doubt in my mind that they are able to take measure of their own

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interest and also of the intrests of the country at large if things are explained to them. In fact, in some respects, I consider them to be even more intelligent than many a worker in a factory, who loses his individuality and becomes more or less a part of the machine which he has to work. I have, therefore, no doubt in my mind that if things are explained to them, they will not only be able to pick up the technique of election, but will be able to cast their votes in an intelligent manner and I have, therefore, no misgivings about the future, on their account. I cannot say the same thing about the other people who may try to influence them by slogans and by placing before them beautiful picutres of impracticable programmes. Nevertheless, I think their sturdy commonsense will enable them to see things in the right perspective. We can, therefore, reasonably hope that we shall have legislatures composed of members who shall have their feet on the ground and who will take a realistic view of things.

Although provision has been made for a second chamber in the Parliament and for second chambers in some of the States, it is the popular House which is supreme. In all financial and money matters, the supremacy of the popular House is laid down in so many words. But even in regard to other matters where the Upper Chamber may be said to have equal powers for initiating and passing laws, the supremacy of the popular House is assured. So far as Parliament is concerned, if a difference arises between the two Chambers, a joint session may be held; but the Constitution provides that the number of Members of the Council of States shall not be more than 50 per cent. of the Members of the House of the People. Therefore, even in the case of a joint session, the supremacy of the House of the People is maintained, unless the majority in that very House is a small one which will be just a case in which its supremacy should not prevail. In the case of provincial legislatures, the decision of the Lower House, prevails if it is taken a second time. The Upper Chamber therefore can only delay the passage of Bills for a time, but cannot prevent it. The President or the Governor, as the case may be, will have to give his assent to any legislation, but that will be only on the advice of his Ministry which is responsible ultimately to the popular House. Thus, it is the will of the people as expressed by their representatives in the popular Chamber that will finally determine all matters. The second Chamber and the President or the Governor can only direct reconsideration and can only cause some delay; but if the popular Chambr is determined, it will have its way under the Constitution. The Goverment therefore of the country as a whole, both in the Centre and in the Provinces, will rest on the will of the people which will be expressed from day to day through their representatives in the legislatures and, occasionally directly by them at the time of the general elections.

We have provided in the Constitution for a judiciary which will be independent. It is difficult to suggest anything more to make the Supreme Court and the High Court independent of the influence of the Executive. There is an attempt made in the Constitution to make even the lower judiciary independent of any outside or extraneous influence. One of our artices makes it easy for the State Governments to introduce separation of Executive from Judicial functions and placing the magistracy which deals with criminal cases on similar footing as Civil Courts. I can only express the hope that this long overdue reform will soon be introduced in the States.

Our Constitution has devised certain independent agencies to deal with particular matters. Thus it has provided for Public Service Commission both for the Union and for the States and placed such Commission on an independent footing so that they may discharge their duties without being influenced by the Executive. One of the things against which we have to guard is that there

should be no room as far as it is humanly possible for jobbery, nepotism and favouritism. I think the provisions which we have introduced into our Constitution will be very helpful in this direction.

Another independent authority is the Comptroller and Auditor-General who will watch our finances and see to it that no part of the revenues of India or of any of the States is used for purposes and on items without due authority and whose duty it will be otherwise to keep our accounts in order. When we consider that our Governments will have to deal with hundreds of crores, it becomes clear how important and vital this Department will be. We have provided another important authority, *i.e.*, the Election Commissioner whose function it will be to conduct and supervise the elections to the Legislatures and to take all other necessary action in connection with them. One of the dangers which we have to face arises out of any corruption which parties, candidates or the Government in power may practise. We have had no experience of democratic elections for a long time except during the last few years and now that we have got real power, the danger of corruption is not only imaginary. It is therefore as well that our Constitution guards against this danger and makes provision for an honest and straightforward election by the voters. In the case of the Legislature, the High Courts, the Public Service Commission, the Comptroller and Auditor-General and the Election Commissioner, the Staff which will assist them in their work has also been placed under their control and in most of these cases their appointment, promotion and discipline vest in the particular institution to which they belong thus giving additional safeguards about their independence.

The Constitution has given in two Schedules, namely Schedules V and VI, special provisions for the administration and control of Scheduled Areas and Scheduled Tribes. In the case of the Tribes and Tribal Areas in States other than Assam, the Tribes will be able to influence the administration through the Tribes Advisory Council. In the case of the Tribes and Tribal Areas in Assam, they are given larger powers through their District Councils and Autonomous Regional Councils. There is, further provision for a Minister in the State Ministers to be in charge of the welfare of the Tribes and the Scheduled Castes and a Commission will also report about the way in which the areas are administered. It was necessary to make this provision on account of the backwardness of the Tribes which require protection and also because their own way of solving their own problems and carrying on their Tribal life. These provisions have given them considerable satisfaction as the provision for the welfare and protection of the Scheduled Castes has given satisfaction to them.

The Constitution has gone into great details regarding the distribution of power and functions between the Union and the States in all aspects of their administrative and other activities. It has been said by some that the powers given to the Centre are too many and too extensive and the States have been deprived of power which should really belong to them in their own fields. I do not wish to pass any judgment on this criticism and can only say that we cannot be too cautious about our future, particularly when we remember the history of this country extending over many centuries. But such powers as have been given to the Centre to act within the sphere of the States relate only to emergencies, whether political or financial and economic, and I do not anticipate that there will be any tendency on the part of the Centre to grab more power than is necessary for good administration of the country as a whole. In any case the Central Legislature consists of representatives from the States and unless they are convinced of their over-riding necessity, they are not likely to consent to the use of any such powers by the Central executive as against the States whose people they represent. I do not attach much

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importance to the complaint that residuary powers have been vested in the Union. Powers have been very meticulously and elaborately defined and demarcated in the three lists of Schedule Seven, and the residue whatever it may be, is not likely to cover any large field, and, therefore, the vesting of such residuary powers does not mean any very serious derogation in fact from the power which ought to blong to the States.

One of the problems which the Constituent Assembly took considerable time in solving relates to the language for official purposes of the country. There is a natural desire that we should have our own language, and in spite of the difficulties on account of the multiplicity of languages prevalnt in the country, we have been able to adopt Hindi, which is the language that is understood by the largest number of people in the country as our official language. I look upon this as a decision of very great importance when we consider that in a small country like Switzerland they have no less than three official languages and in South Africa two official languages. It shows a spirit of accommodation and a determinaiton to organize the country as one nation that those whose language is not Hindi have voluntarily accepted it as the official language. (*Cheers*). There is no question of imposition now. English during the period of British rule, Persion during the period of the Muslim Empire were Court and official languages. Although people have studied them and have acquired proficiency in them, no body can claim that they were voluntarily adopted by the people of the country at large. Now for the first time in our history we have accepted one language which will be the language to be used all over the country for all official purposes, and, let me hope that it will develop into a national language in which all will feel equal pride while each area will be not only free, but also encouraged to develop its own peculiar language in which its culture and its traditions are enshrined. The use of English during the period of transition was considered inevitable for practical reasons and no one need be despondent over this decision, which has been dictated purely by practical considerations. It is the duty of the country as a whole now and especially of those whose language Hindi to so shape and develop it as to make it the language in which the composite culture of India can find its expression adequately and nobly.

Another important feature of our Constitution is that it enables amendments to be made without much difficulty. Even the constitutional amendments are not as difficult as in the case of some other countries, but many of the provisions in the Constitution are capable of being amended by the Parliament by ordinary acts and do not require the procedure laid down for constitutional amendments to be followed. There was a provision at one time which proposed that amendments should be made easy for the first five years after the Constitution comes into force, but such a provision has become unnecessary on account of the numerous exceptions which have been made in the Constitution itself for amendments without the procedure laid down for constitutional amendments. On the whole, therefore, we have been able to draft a Constitution which I trust will serve the country well.

There is a special provision in our Directive Principles to which I attach great importance. We have not provided for the good of our people only but have laid down in our directive principles that our State shall endeavour to promote material peace and security, maintain just and honourable relations between nations, foster respect for internaitonal law and treaty obligations and encourage settlement of international disputes by arbitration. In a world torn with conflicts, in a world which even after the devastation of two world wars is still depending on armaments to establish peace and goodwill, we are destined to play a great part, if we prove true to the teachings of the Father of the

Nation and give effect to this directive principle in our Constitution. World to Got that He would give us the wisdom and the strength to pursuance this path in spite of the difficulties which beset us and the atmosphere which may well choke us. Let us have faith in ourselves and in the teachings of the Master whose portrait hangs over my head an we shall fulfil the hopes and prove true to the best interests of not only our country but of the world at larger.

I do not propose to deal with the criticism which relate mostly to the articles in the part dealing with Fundamental Rights by which absolute rights are curtailed and the articles dealing with Emergency Powers. Other Members have dealt with these objctions at great length. All the I need state at this stage is that the present conditions of the country and tendencies which are apparent have necessitated these provisions which are also based on the experience of other countries which have had to enforce them through judicial decisions, even when they were not provided for in the Constitution.

There are only two regrets which I must share with the honourable Members I would have liked to have some qualifications laid down for members of the Legislatures. It is anomalous that we should insist upon high qualifications for those who administer or help in administering the law but none for those who make it except that they are elected. A law giver requires intellectual equipment but even more than that capacity to take a balanced view of things, to act independently and above all to be true to those fundamental things of life—in one word—to have character (*Hear, hear*). It is not possible to devise any yard-stick for measuring the moral qualities of a man and so long as that is not possible, our Constitution will remain defective. The other regret is that we have not been able to draw up our first Constitution of a free Bharat in an Indian language. The difficulties in both cases were practical and proved insurmountable. But that does not make the regret any the less poignant.

We have prepared a democratic Constitution. But successful working of democratic institutions requires in those who have to work them willingness to respect the view points of others, capacity for compromise and accommodation. Many things which cannot be written in a Constitution are done by conventions. Let me hope that we shall show those capacities and develop those conventions. The way in which we have been able to draw this Constitution without taking recourse to voting and to divisions in Lobbies strengthens that hope.

Whatever the Constitution may or may not provide, the welfare of the country will depend upon the way in which the country is administered. That will depend upon the men who administer it. It is a trite saying that a country can have only the Government it deserves. Our Constitution has provisions in it which appear to some to be objectionable from one point or another. We must admit that the defects are inherent in the situation in the country and the people at large. If the people who are elected are capable and men of character and integrity, they would be able to make the best even of a defective Constitution. If they are lacking in these, the Constitution cannot help the country. After all, a Constitution like a machine is a lifeless thing. It acquires life because of the men who control it and operate it, and India needs today nothing more than a set of honest men who will have the interest of the country before them. There is a fissiparous tendency arising out of various elements in our life. We have communal differences, caste differences, language differences, provincial differences and so forth. It requires men of strong character, men of vision, men who will not sacrifice the interests of the country at large for the sake of smaller groups and areas and who will rise over the prejudices which are born of these differences. We can only hope

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that the country will throw up such men in abundance. I can say this from the experience of the struggle that we have had during the period of the freedom movement that new occasions throw up new men; not once but almost on every occasion when all leading men in the Congress were clapped into prison suddenly without having the time to leave instructions to others and even to make plans for carrying on their campaigns, people arose from amongst the masses who were able to continue and conduct the campaigns with intelligence, with initiative, with capacity for organisation which nobody suspected they possessed. I have not doubt that when the country needs men of character, they will be coming up and the masses will throw them up. Let not those who have served in the past therefore rest on their oars, saying that they have done their part and now has come the time for them to enjoy the fruits of their labours. No such time comes to anyone who is really earnest about his work. In India today I feel that the work that confronts us is even more difficult than the work which we had when we were engaged in the struggle. We did not have then any conflicting claims to reconcile, no loaves and fishes to distribute, no powers to share. We have all these now, and the temptations are really great. Would to God that we shall have the wisdom and the strength to rise above them, and to serve the country which we have succeeded in liberating.

Mahatma Gandhi laid stress on the purity of the methods which had to be pursued for attaining our ends. Let us not forget that this teaching has eternal value and was not intended only for the period of stress and struggle but has as much authority and value today as it ever had before. We have a tendency to blame others for everything that goes wrong and not to introspect and try to see if we have any share in it or not. It is very much easier to scan one's own actions and motives if one is inclined to do so than to appraise correctly the actions and motives of others. I shall only hope that all those whose good fortune it may be to work this Constitution in future will remember that it was a unique victory which we achieved by the unique method taught to us by the Father of the Nation, and it is up to us to preserve and protect the independence that we have won to make it really bear fruit for the man in the street. Let us launch on this new enterprise of running our Independent Republic with confidence, with truth and non-violence and above all with heart within and God over head.

Before I close, I must express my thanks to all the members of this august Assembly from whom I have received not only courtesy but, if I may say so, also their respect and affection. Sitting in the Chair and watching the proceedings from day to day. I have realised as nobody else could have, with what zeal and devotion the members of the Drafting Committee and especially its Chairman, Dr. Ambedkar in spite of his indifferent health, have worked. (*Cheers*). We could never make a decision which was or could be ever so right as when we put him on the Drafting Committee and made him its Chairman. He has not only justified his selection but has added lustre to the work which he has done. In this connection, it would be invidious to make any distinction as among the other members of the Committee. I know they have all worked with the same zeal and devotion as its Chairman, and they deserve the thanks of the country.

I must convey, if you will permit me, my own thanks as well as the thanks of the House to our Constitutional Adviser, Shri B. N. Rau, who worked honorarily all the time that he was here, assisting the Assembly not only with his knowledge and erudition but also enabled the other Members to perform their duties with thoroughness and intelligence by supplying them with the material on which they could work. In this he was assisted by his band of

research workers and other members of the staff who worked with zeal and devotion. Tribute has been paid justly to Shri S. N. Mukerjee who has proved of such invaluable help to the Drafting Committee.

Coming to the staff of the Secretariat of the Constituent Assembly I must first mention and thank the Secretary, Mr. H. V. R. Yengar, who organised the Secretariat as an efficient working body. Although laterly when the work began to proceed with more or less clock-work regularity, it was possible for us to relieve him of part of his duties to take up other work, but he has never lost touch with our Secretariat or with the work of the Constituent Assembly.

the members of the staff have worked with efficiency and with devotion under our Deputy Secretary Shri Jugal Kishore Khanna. It is not always possible to see their work which is done removed from the gaze of the Members of this Assembly but I am sure the tribute which Member after Members has paid to their efficiency and devotion to work is thoroughly deserved. Our Reporters have done their work in a way which will give credit to them and which has helped in the preservation of a record of the proceedings of the Assembly which have been long and taxing. I must mention the translators as also the Translation Committee under the Chairmanship of Honourable Shri G. S. Gupta who have had a hard job in finding Hindi equivalents for English terms used in the Constitution. They are just now engaged in helping a Committee of Linguistic Experts in evolving a vocabulary which will be acceptable to all other languages as equivalents to English words used in the Constitution and in law. The Watch and Ward officers and the Police and last though not least the marshall have all performed their duties to our satisfaction. (*Cheers*). I should not forget the Peons and even the humbler people. They have all done their best. It is necessary for me to say all this because with the completion of the work of Constitution-framing, most of them who have been working on a temporary basis, will be out of employment unless they could be absorbed in other Departments and Ministries. I do hope that it will be possible to absorb them (*hear, hear*) as they have considerable experience and are a willing and efficient set of workers. All deserve my thanks as I have received courtesy, co-operation and loyal service from all. (*Prolonged Cheers*).

It now remains to put the motion which was moved by Dr. Ambedkar, to the vote of the House. The question is :

“That the Constitution as settled by the Assembly be passed.”

The motion was adopted. (Prolonged Cheers).

Mr. President : I have now formally to sign the Bill which has now become an Act, by way of its authentication so that it may get authority and come into force immediately.

Dr. Raghuvira (C.P. & Berar : General) : *[Will you sign in Hind?]

Mr. President : *[Why do you ask the question?]

Mr. President then authenticated the Constitution.

Mr. President : Before the House adjourns, there is one formal matter to be gone through, and that is to give me authority to call another session of the Assembly in January.

Shri Satyanarayan Sinha (Bihar : General) : Sir, I move :

“Resolved that the Constituent assembly do adjourn till such date before the 26th of January 1950 as the President may fix.”

*[] Translation of Hindustani speech.

Mr. President : The question is :

“Resolved that the Constituent Assembly do adjourn till such date before the 26th of the January, 1950 as the president may fix.”

The motion was adopted.

Mr. President : Before we adjourn, I would like to go round and shake hands with all the Members as I did when you first elected me to this place.

The Honourable Pandit Jawaharlal Nehru (United Provinces : General) : We shall come there and shake hands one by one, Sir.

(The honourable Members then shook hands with Mr. President one by one.)

Mr. President : The House is adjourned *sine die*.

The Assembly then adjourned until a date before the 26th of January 1950, to be fixed by the President.

THE CONSTITUENT ASSEMBLY OF INDIA

President:

THE HONOURABLE DR. RAJENDRA PRASAD.

Vice-President:

DR. H.C. MOOKHERJEE.

Constitutional Adviser:

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

Secretary:

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

Joint Secretary:

MR. S.N. MUKHERJEE.

Deputy Secretary:

SHRI JUGAL KISHORE KHANNA.

Under Secretary:

PROF. BAL KRISHNA.

Marshal:

SUBEDAR MAJOR HARBANS LAL JAIDKA.

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CONSTITUENT ASSEMBLY OF INDIA

Tuesday, the 24th January 1950

The Constituent Assembly met in the Constitution Hall, New Delhi, at Eleven 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 :—

Shri Ratnappa Bharmappa Kurnbhar (Bombay States).

Dr. Y. S. Parmar (Himachal Pradesh).

STATEMENT *RE* : NATIONAL ANTHEM

Mr. President : There is one matter which has been pending for discussion, namely the question of the National Anthem. At one time it was thought that the matter might be brought up before the House and a decision taken by the House by way of a resolution. But it has been felt that, instead of taking a formal decision by means of a resolution, it is better if I make a statement with regard to the National Anthem. Accordingly I make this statement.

The composition consisting of the words and music known as Jana Gana Mana is the National Anthem of India, subject to such alterations in the words as the Government may authorise as occasion arises; and the song Vande Mataram, which has played a historic part in the struggle for Indian freedom, shall be honoured equally with Jana Gana Mana and shall have equal status with it. (*Applause*). I hope this will satisfy the Members.

ELECTION OF NEW MEMBERS

Shri B. Das (Orissa : General) : Sir, before we dispersed on the last occasion, we gave full power to you, the Honourable President of the Constituent Assembly of India, to direct the provincial Governments and the Government of India about the way in which elections Will take place for the seats vacated by the displaced persons, who will not be Members of this place any more. Further, we read in the papers that the Honourable the Prime Minister made a statement that more women should be elected to the Parliament. We saw certain statement issued by Rashtrapati Dr. Pattabhi Sitaramayya in connection with election of more women Members.

An Honourable Member : On a point of order, Sir.

Shri B. Das : There is no occasion for any point of order now. The present position, I may say, is that the United Provinces has sent two lady Members in place of three now displaced. The Orissa province has not sent any lady Member. No other Province has made any extra effort to send in lady Members. Women are about 50 per cent of the population. I do not want that they should give battle at the time of the next elections on this ground. I do not want a pitched battle between Man and Woman.

[Mr. President]

Mr. President : I think if you only put a question I may answer it.

Shri H. V. Kamath (C. P. & Berar: General) : May I request you, Sir, to be so good as to tell the House whether any steps were taken to secure the representation of Hyderabad in this Assembly, and if so, at what stage, the matter stands today ? That is the only State that has not so far sent any Member to this Assembly.

Mr. President : I shall answer the questions one by one. So far as filling the vacancies which arose on account of the elimination of Members who were also members of the provincial legislatures is concerned, the rules were amended and elections have been held in accordance with those rules. According to the decision of the House and according to those rules there are no seats reserved for women. It was left to the electorate to elect women. Such persons as have been elected will come to this House and we could not compel any electorate to send in women only.

As regards the other question, I am not in a position to say as to what steps have been or have not been taken. That is really a matter for the Government.

Shri H. V. Kamath : May I know if any instructions were issued from your office?

Mr. President : We had asked all those who are entitled to send Members to this House to send their representatives. That has been done and nothing further has happened after that.

Shri H. J. Khandekar (C. P. & Berar: General) : May I know whether any instructions were issued by you or by your office to fill the seats vacated by Scheduled Castes by Members from the aboriginal tribes ?

Mr. President : I do not think there were any such instructions issued.

Shri H. J. Khandekar : But there were some instructions issued to some Provinces that the Harijan seats should be filled by the aboriginal tribes.

Mr. President : I do not know.

Shri H. J. Khandekar : Were such instructions issued in Orissa?

Mr. President : I do not know.

Prof. Shibban Lal Saksena (United Provinces: General) : May I know whether any Hindi translation of the Constitution has been prepared ?

Mr. President : Yes, it is ready.

Shri H. J. Khandekar : May I request you to enquire into the matter as regards Orissa where from a member of the aboriginal tribe is elected to this House in place of a Harijan ?

Mr. President : If I continue in this place I will enquire about it.

ELECTION OF PRESIDENT OF INDIA

Mr. President : The next item is the announcement of the result of the elections. I call upon Shri H. V. R. Iengar, the Returning Officer and the Secretary of the Constituent Assembly to make the announcement.

Shri H.V. R. Iengar (Returning Officer and Secretary, Constituent Assembly) : Mr. President, I have to inform honourable Members that only one nomination paper has been received for the office of the President of India. The name of

that candidate is Dr. Rajendra Prasad. (*Loud and prolonged cheers.*) His nomination has been proposed by Pandit Jawaharlal Nehru (*Renewed Cheers*) and seconded by Sardar Vallabhbhai Patel (*Continued Cheers*), Under sub-rule (1) of rule 8 of the Rules for the election of the President, I hereby declare Dr. Rajendra Prasad to be duly elected to the Office of President of India. (*Prolonged Cheers*).

The Honourable Shri Jawaharlal Nehru (United Provinces : General) : Mr. President, may I, Sir, on my own behalf and on behalf of every Member of this honourable House offer you respectful congratulations on this high honour that has been conferred upon you ? It is more than three years since we began the work of this Constituent Assembly under your leadership, and during these three years much has happened in this country which has changed the face of this country. We have faced turmoil and crisis repeatedly but we have gone on with the work of making a Constitution for the public of India, and now we have accomplished that task. That chapter is closed. Fresh labours await us and another chapter begins in a day or two. Not only have we had experience of your able leadership during these three years of great difficulty but many of us have known you for three and thirty years or so as a soldier of India, ever in the forefront of the battle for freedom. (*Cheers*). So, we welcome you Sir, as our leader, as the Head of the Republic of India, and as a comrade who has faced without flinching all the crisis and troubles that have confronted this country during the past generation. One task is accomplished today in this Assembly an this Assembly will cease to be, having done its work or rather it will suffer a sea change and emerge as the Parliament of the Republic of India. One task is accomplished that we, set for us long ago. Other tasks now confront us. One dream that we dreamt for years past has been realised, but we confront again other dreams and other tasks, perhaps more arduous than the one we have already accomplished. It is a comfort for us ail to know that in these future tasks and struggles, we shall have you as the Head of this Republic of India, and may I, Sir, pledge my loyalty and fealty to this Republic of which you will be the honoured President. (*Prolonged Cheers*).

The Honourable Sardar Vallabhbhai J. Patel (Bombay: General) : Mr. President and Friends, I crave, your permission, Sir, to join in the chorus of congratulations showered on you on this sacred occasion when you have been elected as the Head of the State by the unanimous will of the representatives of the nation. (*cheers*). I endorse every word that has fallen from the lips of the Honourable the Prime Minister and I beg to congratulate you on the great honour that has been conferred on you. For three years you have been working as the President of the Constituent Assembly and Members have watched the way in which the proceedings of the Assembly have been conducted by you. At one time we were anxious and nervous because of your failing health due to the strain put upon you, but Providence has been merciful enough to restore you to your normal health and enable all of us to have the good fortune of seeing you elected as the first President and the, Head of the State of the Republic of India. This is a red letter day in the history of India, and we have no manner of doubt that under your wise judgment, your unruffled and cool temperament and your method of dealing with men and things, the honour and prestige of the country will rise as days go by and under your distinguished leadership the country will attain the status which it deserves among the nations of the world. I pray God may give us all the good sense to give you unreserved loyalty and complete co-operation in the heavy task which God has put upon you. We all of us have to swan together in the stormy seas that we have to cross in the future. You have by your affectionate temperament and by your goodness of heart won the affection of every section of not only this House but every section of the people of the country at large. You richly deserve the honour that bar, been conferred upon you. (*Cheers*).

Shri B. Das : Mr. President.....

Mr. President: Before Mr. Das speaks, may I just remind Members that on an occasion like this it is embarrassing for me to be sitting here and to listening to speeches which will contain sentiments hardly deserved by me, and I would therefore request Members, if they insist upon speaking, to confine their remarks to just as few sentences as possible.

Shri B. Das (Orissa: General) : Mr. President, Sir, my heart goes in thankfulness to God that you are the first President of the Republic of India. Two thousand five hundred years ago, your province gave birth to Gautam Buddha who carried the message of peace all over Asia. In our own century Mahatma Gandhi, the Father of the Nation, preached the gospel of universal peace through non-violence. You are a great disciple of his and I sincerely hope—I have known you for so many years—that you will carry that message and uphold the doctrines of Mahatma Gandhi not only in your rule over us in India but throughout the universe. People are everywhere suffering from the greed of men and India stands in no less need of upliftment. It is God's will that you should guide our destinies through non-violence to peace and to a higher and nobler status of humanity. I hope that under your leadership India will be able to bring about world peace and human happiness.

Dr. H. C. Mookerjee (West Bengal: General) : Sir, even I belong to a particular political organization. The fact that you have been elected to fill your very high position unanimously is the clearest possible proof that you are not the choice of a particular dominant political party, but the choice of the whole nation. This choice of the whole nation, you have won on account of your sterling-honesty, on account of your past record of unselfish service, and the country has given you the highest possible position it can give anybody. It is only in deference to your wishes that I shall not make any long speech. I have to say one thing and it is, I pray to God that as you do your duty, you may win the approval of your own conscience, you may win the approval of the nation which has elected you and that you will win the approval of the Father of our Nation, who must be pleased when he sees what is happening and finally, the approval of God. May God bless you in all that you do.

Mr. Hussain Imam (Bihar: Muslim) : Mr. President, it is a day of happiness for all especially for us Biharis, as it is after centuries that a Bihari has been able to give its services to India in the manner and in the personality of your goodself. We, Sir, in this House, have known your goodness and known all your qualities of head and heart, and we could not but be happy at the choice which has been made. We all of us without any distinction of caste, creed or community congratulate you from the bottom of our heart and hope that you will fulfil this place with honour, dignity and benefit to the people of India.

Mr. President : For once after three years, I hope the House will permit me to stop further discussion.

Shri V. I. Muniswamy Pillay (Madras: General) : Sir, coming as I do from the southern-most Province of India, the Tamil Nad, I take this opportunity, Sir, of extending our whole-hearted congratulation to you, Sir, for being unanimously elected to the greatest office of India, under whose destiny is going to be the future of India. Sir, Mahatma Gandhi in whose footsteps you have been following and observing his noble example of extending your whole-hearted support to the down-trodden masses of India, I pray, Sir, that the Almighty may give you long life, so that you may continue that noble work and elevate the down-trodden, the oppressed, the untouchable and all those people who have been removed away from the statute as no longer untouchables.

Mr. President : I have had co-operation from the Members all these years. I hope it will not be denied to me today, i.e., on the last day. So I would beg honourable Members now to stop further discussion and not embarrass me more.

(Seth Govind Das came to the mike to speak).

(Interruption.)

Mr. President : I am sure I have the House with me on this occasion as on all occasions, and so, I would request Members who are anxious to speak to desist from doing so.

I recognize the solemnity of this occasion. We have after a long struggle reached one stage, and now another stage begins. It has been your kindness to place on me a very heavy responsibility. I have always held that the time, for congratulation is not when a man is appointed to an office, but when he retires, and I would like to wait until the moment comes when I have to lay down the office which you have conferred on me to see whether I have deserved the confidence and the goodwill which have been showered on me from all sides and by all friends alike. When I sit listening to laudatory speeches—and although I have, tried to cut that down to some extent, here also I have had to submit to it to a certain extent,—I am reminded of a story in the Maha Bharat, which is so full of piquant situations, and the solution that was found by Shree Krishna, who solved all those difficult and apparently insoluble problems which arose was this. One of those days, Arjun took a vow that he would perform a certain thing before the sun set on that day and that if he did not succeed, he would bum himself on a pyre. He unfortunately, did not succeed. And then the problem arose as to what was to be done. In fulfilment of that vow, he would have to burn himself. This, of course, was unthinkable so far as the Pandavas were concerned. But Arjuna, was adamant in his resolve. Shri Krishna solved this problem by saying, “if you sit and praise yourself or listen to praise by others, that would be equivalent to committing suicide and burning yourself; So you had better submit to that and your vow will be fulfilled.” Very often I have listened to such speeches in that spirit. Because, I have felt that there, are many things which I am not able to fulfil, which I am not able to accomplish, and the only way in which I can fulfil these things is to commit that kind of suicide. But, here, I am in a somewhat different situation. When our prime Minister and our Deputy Prime Minister speak with emotion about me, I cannot but reciprocate that kind of emotion. We have lived and worked together for more than quarter of a century and in the closest association we have fought. We have never faltered; we have jointly succeeded also. And now that I am placed in one chair and they are occupying other chairs side by side, and there are other friends whose association I value equally well who will be sitting by their side to help and assist me and when I know that I have the good will of all the members of this House and of a very large circle of friends outside this House. I feel confident that the duties which have been imposed upon me will be discharged to their satisfaction: not because I can do that, but because the joint efforts of all will enable the duties to be so performed.

The country today is facing very many problems and my feeling is that the kind of work which we have now to do is different from that which we used to do two years ago. It requires greater devotion, greater care, greater application and greater sacrifice. I can only hope that the country will throw up men and women who will be able to take up the burden and fulfil the highest aspirations of our people. May God give us strength to do that.

SIGNING OF THE HINDI TRANSLATION OF THE CONSTITUTION

Mr. President : Now there are two things more which remain to be done. One is the authentication or rather the certification of the Hindi Translation of the Constitution. Honourable Members will recollect that this House authorised me by a resolution to get the Hindi translation prepared, and printed and published before the 26th of January. That has been done. The House also authorised me to get translations in other languages prepared, printed and published. That work has not yet been completed; it has been taken up.

I will ask Shri Ghanshyam Singh Gupta to let me have the Hindi Translation so that I may formally place it before, the House and certify it.

(The Honourable Shri Ghanshyam Singh Gupta handed over to Mr. President copies of the Hindi Translation of the Constitution. Mr. President then signed them.)

SIGNING OF THE CONSTITUTION

Mr. President : The only thing that now remains is the signing of the copy of the Constitution by the Members. There are three copies ready. One is in English completely hand-written and illuminated by artists. The second copy is in print in English. The third copy is also hand-written in Hindi. All the three copies are laid on the table and Members will be requested one by one to come and sign the copies. The idea is to call them in the order in which they are sitting in the House now. But, as the Honourable the Prime Minister has to go on public duty, I will request him first to sign them.

(The Honourable Shri Jawaharlal Nehru then signed the copies of the Constitution.)

Shri Algu Rai Shastri (U.P. : General) : *[Mr. President, I want to submit that since the Constituent Assembly has accomplished its task, its office will now be closed. I wish that the services of the staff working in this office should continue in some form or other. It should not be that on the 26th of January, when the whole country will be engaged in festivities, these officials may not feel like participating in them, although they deserve their share. This is all that I want to submit.]

Mr. President : *[I would like to say in this connection that I have paid attention to this question and have corresponded with the Legislative Department and other departments of the Government for accommodating so far as possible, the persons working in our office. Efforts are being made for it. I hope that most of the people, if not all, will find employment. Efforts will be made to find employment for those also who are left out.]

The Members will now come from the right side, from Madras side, as they are and sign one by one.

(The Members then signed the copies of the Constitution.)

Mr. President : I would suggest to honourable Members just to take their places, and sign as the names are called. That would, I think, be better; it will certainly look nicer. Mr. Khanna will call out the names of the Members, one after another.

(The remaining Members present then signed the copies of the Constitution after which Mr. President signed the copies.)

*[]Translation of Hindustani Speech.

Mr. President : Is there any Member who has not yet signed? If any, he may sign later on in the office.

Honourable Members : Bande Mataram.

Sri M. Ananthasayanam Ayyangar (Madras: General): All of us will sing, with Your permission, Sir, “Jana Gana Mana”.

Mr. President : Yes.

(Shrimati Purnima Banerji with other Members sang “Jana Gana Mana” all standing.)

Mr. President : “Bande Mataram”.

(Pandit Lakshmi Kanta Maitra, with other Members then sang “Bande Mataram”, all standing.)

Mr. President : The House will stand adjourned now, *sine die*.
The Constituent Assembly then adjourned, *sine die*.
