

Thursday, 31st July, 1947

**Volume IV**



**14-7-1947  
to  
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# **CONSTITUENT ASSEMBLY DEBATES**

## **OFFICIAL REPORT**

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CONSTITUENT ASSEMBLY OF INDIA

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## CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 31st July 1947

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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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**Mr. President:** Think there is no member who has to take his seat today. We shall proceed with the Agenda.

The first item on the Agenda is the motion of Shri Deshbandhu Gupta for amending Rule 5 concerning representation of Delhi and Ajmer-Merwara in the Constituent Assembly.

**Mr. H. V. Kamath** (C. P. & Berar : General): Sir, with reference to the transfer of power ceremony on the 15th August, may I submit that your dignity and prestige as the President of the Sovereign Constituent Assembly demand that, so far as the ceremonial programme in this House at least is concerned, that should be settled and finalised by you and you alone without any official interference or dictation whatsoever. I am sure the House will be deeply indebted to you for an assurance on this point.

While chalking out the programme, Sir, I would implore you to include in it our traditional National Song, *Vande Mataram*, as well as that other beautiful song popularised by our great warrior-statesman Netaji Subash Chandra Bose, namely, the song beginning with the words :

शुभ सुख चैन की बरखा बरसे भारत भग है जागा  
(*Subh sukh chain ki barsha, barse Bharat bhag hai jaga*)

Secondly, permit me to remind you, Sir, of the request I made to you on Monday regarding the presentation of the National flag to every Member of the Constituent Assembly. We are rather anxious to have the Flag before the 15th August. I venture to hope that the Steering Committee will not stand in the way and will raise no objection to this proposal.

**Mr. President:** I may inform the House and the Hon'ble Member Mr. Kamath that, as regards the programme, I propose to make a statement at the close of the sitting today. There is no question of any dictation by any outside authority. We shall fix our own programme. (*Applause.*) As regards the arrangements for the 15th August, I have some ideas in my mind which I have considered with Pandit Jawaharlal Nehru and some other friends and I will place them before the House.

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### AMENDMENTS OF THE RULES

**Mr. Deshbandhu Gupta** (Delhi): \*[Mr. President, the motion which stands in my name is this:

“(1) That in sub-rule (2) of rule 5 (as amended) of the Constituent Assembly Rules, the words “the Advisory Councils of Delhi and Ajmer-Merwara” occurring after the words “as the case may be” be deleted.

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\*[ ]\*English translation of Hindustani Speech.

[Mr. Deshbandhu Gupta]

(2) That for sub-rule (12) of Rule 5 (as amended), the following be substituted:—

‘If any vacancy occurs by reason of death, resignation, or otherwise in the office of a member representing Delhi or Ajmer-Merwara in the Constituent Assembly, the President shall notify the vacancy and shall call upon the Chief Commissioner of Delhi or Ajmer-Merwara as the case may be, to take steps to hold, a bye-election to fill the vacancy.

The bye-elections shall be held, as nearly as may be, in accordance with the procedure prescribed by the Legislative Assembly Electoral Rules, as in force on August 1, 1947, for the election of a member to represent Delhi or, as the case may be, the Ajmer-Merwara constituency of the Indian Legislative Assembly.’”

As regards this, I have only to say that according to the earlier amendment of Mr. Santhanam a casual vacancy in the case of Delhi and Ajmer-Merwara was to be filled up the Advisory Council which consists of not more than seven members.

It was natural that objections were raised from Delhi and Ajmer-Merwara as the Advisory Council was not an elected body like the Provincial Legislative Council. It is only a small body formed by indirect election. Its powers are limited and it seems inappropriate that the Advisory Council consisting of a few members should be called upon to form an electoral college for filling a casual vacancy. If you look at it carefully you will find that the task of electing devolves only on three non-official members out of a total of seven. As far as Delhi is concerned, the Advisory Council has been elected by the elected members of Delhi and New Delhi Municipalities. The latter is the bigger body. It has some nominated members also, and therefore all its members do not take part in elections. There is another objection. It is this: If the Advisory Committee is entrusted with the task of election it would mean that 3 lacs voters of New Delhi would be disfranchised. This is not expected now, as Delhi has no legislative Council. It was thought that the Advisory Council would do this job. But people have reason to complain view, it is proposed to amend this rule. In the case of Delhi, a casual vacancy can be filled in the manner by which election was originally held in Delhi. The position of Delhi members is a bit different from that of others. These have been elected by Provincial Assemblies, but those for Ajmer-Merwara have been elected directly. Therefore, it would be right in principle that the bye-election should be held in the same manner as the original election. This is my motion, I think it has been accepted by the Steering Committee. I hope the House will have no objection to it.]\*

**Mr. President:** Does any member wish to say anything about this amendment.

(No member rose to speak.)

I take it that no member wishes to say anything on this. I will put the amendment to vote.

*The motion was adopted.*

## REPORT ON THE UNION CONSTITUTION

**Mr. President:** Then we come to the discussion of the remaining clauses of the report of the Union Constitution Committee. Shall we now take up Part X, Sir Gopaldaswami Ayyangar.

**The Honourable Sir N. Gopaldaswami Ayyangar** (Madras : General): If I may suggest it for your consideration, Sir, we may perhaps take up the clauses left over for consideration.

**Mr. President:** You suggest that we now take up Clause 7 and I have no objection.

**The Honourable Sir N. Gopaldaswami Ayyangar:** I have already moved Clause 7. You may now call upon the members who have given notice of amendments to this clause to move their amendments.

## CLAUSE 7

**Mr. President:** The first is Clause 7. We had a number of amendments regarding Clause 7. Shall we take up these amendments or is there any amendment which has been arrived at by way of an agreement. Is there any agreement like that?

**The Honourable Sir N. Gopaldaswami Ayyangar:** Sir, what I would like to say is that after having a discussion with those particularly interested in this amendment, we came to an agreed conclusion, and I gave notice of an amendment in terms of that conclusion. But I understand that there is some difference of opinion even as regards the form of the amendment of which I have given notice. If Honourable Members representing the States will move the amendments of which they had given notice and will indicate their views and if I see that the views indicated in the House are not exactly the views which I thought they held some days ago, then I would suggest some course of action which might perhaps bring the two points of view together. I would therefore suggest that you call upon the representatives of the States to move their amendments and to indicate their views.

**Mr. President:** The best thing is to take up all the amendments of which I have got notice. The first amendment to Clause 7 is by Mr. Naziruddin Ahmed.

**Mr. Naziruddin Ahmed** (West Bengal: Muslim): Mr. President, I beg to move amendment No. 192, with a little verbal alteration of a minor nature. I beg to move that for para (b) of sub-clause (2) of clause 7 the following be substituted:

“(b) Notwithstanding the provisions of the Code of Criminal Procedure, 1898 or of any other law for the time being in force, relating to the remission of the punishment imposed on any person by any court exercising criminal jurisdiction, the President shall have the supreme right and power to remit wholly or in part the sentence passed by such court on any such person.”

I beg to submit that this only a drafting amendment and I submit it for the consideration of the Drafting Committee.

**Mr. President:** Sir B. L. Mitter.

**Sir B. L. Mitter** (Baroda State): Sir, the amendment which I move is:

That in sub-clause (2) (b) of Clause 7 after the word “jurisdiction” the words “in a Province” be inserted.

[Sir B. L. Mitter]

The object of the amendment is that the power of pardon and reprieve which now vests in a Ruler of a State may be preserved. If this amendment is accepted, then this power of the President will be exercised in matters arising in Provinces and not in a State. I see the point that in regard to crimes which are created by the Union Legislature, the President should be the supreme authority. I could concede that point, but at the same time the States do not want the existing powers of the Rulers to be curtailed. A solution may be concurrent jurisdiction in the Rulers as well as the President. If Sir Gopaldaswami will draft an amendment reserving the power of the Ruler and giving the same power to the President, I am quite willing to accept it.

**Mr. President:** Then I have got three amendments in the names of Mr. Channah, Mr. Guruv Reddy and Mr. Himmatsingh Maheshwari, which are all to the same effect. So they need not move them.

Then amendment No. 197 by Mr. Chengalaraya Reddy.

**Mr. K. Chengalaraya Reddy** (Mysore State): I am not moving it.

(Mr. Gupte did not move his amendment No. 198).

**Mr. Debi Prosad Khaitan** (West Bengal : General): I am not moving amendment No. 199.

(Shri M. Ananthasayanam Ayyangar did not move his amendment No. 4 of Supplementary List 1.)

**The Honourable Sir N. Gopaldaswami Ayyangar:** Sir, I beg to move for Clause 7 (2) (b), the following be substituted:

“(b) The power to grant pardons, reprieves, respites, remissions, suspensions or commutations of punishment imposed by any Court exercising criminal jurisdiction shall be vested in the President in the case of convictions—

(i) for offences against Federal laws relating to matters in respect of which the Federal Parliament has, and the Unit Legislature concerned has not, the power to make laws; and

(ii) for all offences tried by Courts-Martial.

Such power may also be conferred on other authorities by Federal Law:

Provided that nothing in this sub-clause affects any power of any officer in the Armed Forces of the Federation to suspend, remit or commute a sentence passed by a Court-Martial.”

Sir, this amendment was given notice of after there had been discussion between me and the representatives of a number of States who have sponsored the amendment which Sir B. L. Mitter has just moved. The intention of that amendment was to restrict the power of pardon granted under this clause only to punishments imposed in Provinces. In other words, they wanted to retain, in the Rulers of Indian States, the unlimited power of pardon which they now possess in respect of all convictions.

Now, Sir, that raised an issue of some importance. We are now setting up a Federation and we are dividing sovereign powers between the Federation and the Units; in respect of certain subjects the Federation has the power to make laws and in other subjects the Units have the power to make laws to the exclusion of the Federation. In the case of the Provinces there is a third list of subjects in respect of which both the Federation and the Provinces have the power to make laws.

Now, in considering this question of where the power of pardon should be located, there are two principles which we have to keep in view. The first is that we must have due regard to the authority which makes the laws against which the offences are committed. The second consideration that we have to take into account is the kind of courts which pronounce these sentences or convictions. It so happens that, so far as British India is concerned, we have a unified system of judicial administration and the courts in the provinces from the lowest to the highest have got jurisdiction to try offences not merely against Provincial Laws, but against Federal Laws also. In Indian States the same thing is in force. The courts of Indian States have power to try all kinds of offences, even offences which might become offences against the Federal Laws after the Federation comes into being. And the power of pardon also is more or less similar as between the Province and the Indian State with perhaps one exception. It is the Provincial Government, according to the Criminal Procedure Code as last amended, that has the power to pardon, commute or remit sentences in the case practically of all offences with the one proviso that if a sentence happens to be a death sentence the Central Government has a concurrent power. In the case of Indian States there is not that exception now in existence. Now we had to consider the question, whether in these circumstances we should vest the power of pardon in the Provinces or in the Centre or in both. I think, Sir, the House will agree that, when we are setting up a Head of the Federation and calling him the President, one of the powers that should almost automatically be vested in him is the power of pardon. Now, is the power of pardon going to be unlimited in its character, or are we going to give him only limited powers of pardon? He is not like a hereditary monarch in a position to derive his powers of pardon from any theory on a royal prerogative and so on. If he exercises the power of pardon, we must vest the authority for it to the Constitution or to some Federal Law. That is why, in the Constitution, we have got to decide this question.

I may say at once that practically in all federations this power of pardon has been divided between the head of the federation and the head of the unit and the principle on which this division is made is that the head of the federation has the power to pardon offences against the federal laws and the head of the unit has power to pardon offences against the unit laws. Now, the question for us to consider is whether we would follow the practice of all federations.

As the draft now stands, both in the Union Constitution and the Provincial Constitution, the power of pardon is vested in the President of the Federation. But provision is made for that power being conferred on other authorities by Federal Law. There is no provision in the draft model provincial constitution which you have already adopted which confers any power of pardon on the Governor of Provinces. So, it comes to this, that the intention of the present clause is that the President is the primary pardon granting authority, and that Federal Law might confer such authority on other people.

**Mr. President:** There is one difficulty which I feel. Will you please explain that? Does your amendment exclude pardon by the President in the case of offences under the Penal Code, say murder?

**The Honourable Sir N. Gopalaswami Ayyangar:** The clause as stands does.

**Mr. President:** The clause as amended by you, does it give the President power of pardon of the offence of murder?



**The Honourable Sir N. Gopalaswami Ayyangar :** No. It does not. As I explained, the clause as it stands, confers the entire power of pardon. On the President though a Federal Law might confer it on other authorities. Now the amendment that I have given notice of gives the President the power to grant pardon only in the case of offences against Federal Laws, and that is all. He cannot, for instance, grant pardon in the case of sentences under the ordinary criminal law. In the Provinces, ordinary criminal law occurs as item 2, I think, of the concurrent list and in a case like that in the concurrent list, the theory of the 1935 Act is that the executive power does not necessarily extend to concurrent subjects, in respect of which the federation also has power of making laws.

**Mr. President:** What are the cases that you contemplate in which the President would have the power to grant pardon? Practically the whole of the penal law is a provincial subject. What will be the offences in which the President will have the power to grant pardon.

**The Honourable Sir N. Gopalaswami Ayyangar:** I might mention, Sir, offences, say, against the Income-tax Act; may be against the Sea Customs Act and Acts of a similar description which are exclusively Federal.

Now, the principle behind my amendment is that the President will have the power to grant pardon, etc., only in the case of offences against the Federal Laws. The power to pardon offences against the ordinary criminal law and against laws made by the Provinces or the States will vest in the heads of the Provinces or the States.

**Sir Alladi Krishnaswami Ayyar (Madras: General):** I presume that a corresponding change will be made in the provincial constitution conferring power apart from any delegation by the federal government to the provincial government both in respect of concurrent subjects and subjects, specially falling in the provincial list.

**The Honourable Sir N. Gopalaswami Ayyangar:** Yes, Sir. The intention is that if you carry this amendment in the Union constitution, a corresponding provision will have to be made in the model provincial constitution and steps will be taken to that end.

I shall, now, deal, Sir, with the point raised by Sir B. L. Mitter's amendment. His amendment says that this power of pardon in this particular Clause should be limited to Provinces. Of course the Indian States are not concerned with how we divide the power of pardon between the Centre and the Provinces. That particular amendment is motivated by the facts which are now in existence in the Indian States, namely, that it is the Ruler who has the power of pardon in respect of every offence for which conviction is obtained in his courts. Now, the objection to excluding the President from power to grant pardon in such cases cannot hold, Sir, on any ground of principle because of the other consideration that I asked the House to take in to account in considering questions of pardon, namely, that the authority which makes the law and the executive which is responsible to it, whose function it is to execute the law, cannot be deprived of the power to decide the policy with regard to the grant of pardons, remissions, reductions, and so on. Therefore the power in respect of federal offences has necessarily to vest in the President of the Federation. The amendment that has been tabled by me took note of one element. What I apprehended was, a certain amount of sensitiveness a delicacy on the part of the Rulers who may not be willing to part with any portion

of the power which, they now exercise as regards pardon of sentences, and so on, and the further sensitiveness that, if you vest a concurrent power in any portion of that field in an outside authority, it would mean a certain amount of clash and conflict between the way in which the Ruler of a State might choose to exercise this power and the manner in which the President of the Federation might choose to exercise it.

So, I was impressed by the fact that, if possible opportunities for this conflict should be avoided and that is why I have in this amendment divided the offences into two different categories, in respect of one of which the President of the Federation alone has the power to grant pardon and that is with regard to offences against federal laws, and another category in which the Ruler of a State or the Governor of a Province were to exercise this power. Now, I wish the House to understand that, if this means a curtailment of the present powers of pardon possessed by the Ruler of a State, it also means a curtailment of the powers of pardon which the Provincial Government now possesses under the Criminal Procedure Code. This amendment therefore seeks to place both the Provinces and the States on the same footing as regards this power. The vesting of the power in the President is necessitated by the fact that we are creating a federation and we cannot omit to vest in the President of the Federation the power to pardon offences.

Now, Sir it may be asked why is it that you want this power to be vested in the President in the case of all offences against the federal laws, while, under the present state of things, the Governor-General can exercise this power, and that only concurrently, with the provincial government and only in respect of death sentences. Well, the answer to that is simply this. We are making a new constitution and we are not necessarily bound by what obtains today. We have got certain principles to guide us in the making of the new constitution.

If under that constitution we are assigning certain powers exclusively to the Centre which formerly belonged to the States, then it is only reasonable that all ancillary powers in regard to the administrations of such subjects must also be assigned to the Centre and if incidentally it happens to interfere with the present practice in the Provinces also, we must be quite prepared to face that curtailment. That is really at the back of the amendment of which I have given notice.

Now there are two or three matters at the end of this amendment to which I might make reference in passing. This gives the President the power to grant pardons, etc., in respect of all offences tried by Courts-Martial. Courts-Martial are constituted under the Indian Army Act and the Indian Army has to be under the control of the Centre. It is only right that the personnel of the Indian army who get convicted by these Courts-Martial should look to the President of the Federation for pardons, commutations and similar concessions.

The second matter to which I should like to make reference is the proviso at the end of the draft. This is taken from Section 295 of the Government of India Act, 1935. It says that "nothing in this sub-clause affects any power of any officer of the Armed Forces of—the Federation"—that expression has been substituted for 'His Majesty's Forces' in the Government of India Act—to suspend, remit or commute a sentence passed by a Court-Martial. Under the Rules framed under the Indian Army Act certain officers of the Indian army have powers to grant remissions of punishment and those powers are saved by this proviso.

[The Honourable Sir N. Gopaldaswami Ayyangar]

I think, Sir, that on the whole this particular amendment is quite in accordance with the principles which underlie the framing of any Federal Constitution and the curtailment of the powers of the Rulers of States and of the Governors of the Provinces which is implied in this amendment is only a thing which should be expected naturally from any Federal Constitution. Sir, I move this amendment.

**Shri M. Ananthasayanam Ayyangar** (Madras: General): Sir, I beg to move:

“That in sub-clause (2) (b) of the draft as amended, at the end, the following may be added.”

I am referring to the draft amendment circulated to members and this is an amendment to Sir N. Gopaldaswami Ayyangar’s amendment. This amendment relates to the addition to the rights of the President, to extend his right to pardon in cases of sentences of death passed in any province. I shall read the text of my amendment:—

“Where any person has been sentenced to death in a province, the President shall have all such powers of suspension, remission or commutation of sentences as are vested in the Governor of the Province.”

I am confining this, Sir, to the power to grant pardon in cases of death sentences passed in a Province. I would be glad to extend this power even to cases of death sentences passed in a State. Death sentences are being abolished in various countries in the world. In Norway, Capital punishment has been done away with. Even in such a country as Russia where we heard a long time ago of blood baths, they have also abolished capital punishment. All progressive countries in the world have altogether abolished capital punishment. Under the existing Government of India Act the Governor-General is entitled to pardon concurrently with a Governor in all cases of death sentences. In other cases it is the exclusive right of the Governor in all Provinces to condone or reprieve or grant pardons in any manner under the ordinary Criminal Law. The Governor-General can interfere only in cases of death sentences. It was before the 1935 Act was passed that the Governor-General could interfere in all cases of punishment in a like manner as the Governor was entitled to exercise his right of pardon. But after the 1935 Act, to make Provincial Autonomy perfect the right of the Governor-General to have concurrent jurisdiction in respect of pardon was taken away except in the matter of death sentences. That alone was preserved. Now under the draft amendment that has been placed before this House by Sir N. Gopaldaswami Ayyangar, no right to pardon has been conferred upon the President except in matters exclusively within the competence of the Federation, *i.e.*, wherever the Federal Legislature may pass a law. In those subjects alone the President has been given power to pardon. This is, no doubt, an improvement over the 1935 Act. But in the matter of granting pardon in the case of death sentences, wherever convictions might have been given, that right of pardon has been taken away. Life sentence is a very serious one and therefore there must be another agency also to consider if there are any cases in which pardon should be exercised. There may be some doubt if the President were an appellate authority in certain matters. There is no question of appellate jurisdiction of the President. He has concurrent jurisdiction. It is open to the Governor himself to grant a pardon. If he does not the President will exercise his right to grant a pardon. In cases where the pardon is granted by the Governor, the President has no right to revoke that pardon and then convict him. I am trying to disabuse or remove certain doubts that might remain in any quarters. In criminal cases, if a man is granted pardon by the Governor, he goes

scot-free. If it is not granted by the Governor, then he has a chance to go to the President who can interfere and exercise the right of pardon in cases of death sentences. I hope the House will kindly accept this amendment which tries to incorporate in this amendment of Sir Gopalaswami a power which is now being exercised by the Governor-General.

Sir, as regards the other powers that have been conferred upon the President to have exclusive right to grant a pardon in the matter of offences against Federal Laws, I would only appeal to the States not to try to take away that right of the President in so far as they are offences against Federal Laws. The States have Submitted, they have come with open eyes and they have acceded to the Union with respect to Defence, Foreign Affairs and Communications. There may be other taxation measures also to keep these Departments going. If there are offences again these Departments and against these laws, it is but natural that the President should have the power, wherever they may be exercised. The Rulers of the States ought not to feel that their right to grant pardon is taken away. The Ruler has by his accession himself conceded the right to interfere in three federal matters as regards his State. Therefore there is no meaning in the objection. If it should prevail it will be giving by one hand and taken away the same by the other. If Defence is entrusted to the Federation any interference with that subject or contravention should be punishable, on a complaint instituted by the President. There is no question of prestige in this matter, when particularly, the people from the States are in favour of this amendment. I appeal to the Ministers who represent the States here that they ought not to try to avoid the States conferring the power so far as Federal subjects are concerned in the matter of pardon, to the President of the Federation exclusively, for this reason that Defence and those subjects have been entrusted by the Rulers of the States to the Federation. Otherwise merely passing laws would not be useful unless there are sanctions and the sanctions could not be enforced. If the President of the Federation or the Federal Executives, is trying to enforce a particular law which pertains to a right ceded by the Ruler himself any interference by the Ruler would be interference with the powers that he has conceded to the President. I am requesting the Ministers to kindly consider this matter and fall in line and not move any amendment to the draft that has been proposed by Sir N. Gopalaswami Ayyangar. With all respect I would urge upon them not to take this as a matter of prestige. They have taken a particular step; this is an ancillary power that must be conferred on the President. Otherwise, there will be a conflict between the two and the conferment of that right to the Centre will become useless.

**Mr. President:** The original clause and the amendments are now open to discussion. I do not think there are any other amendments of which I have notice.

**Mr. Mahomed Sheriff** (Mysore State): Mr. President, Sir, I have heard with rapt attention the admirable speech made by Sir N. Gopalaswami Ayyangar and also Mr. Anathasayanam Ayyangar regarding this very intricate point. That it is a point which is full of complication admits of no dispute. I wish that in view of its complicated nature we had been given more time to study the pros and cons of this question, but as it has come before us and as you want us to give our opinion upon it, I think it is necessary for us to state, in our capacity as the representatives of the States what our opinion is in this matter.

Sir, I do concede that so far as the President is concerned, in view of the fact that he is at the helm of the administration, he should have the power of pardon and he should have the power of commuting sentences

[Mr. Mohamad Sheriff]

in respect of cases arising out of criminal jurisdiction. Situations may arise in which he should have to exercise clemency. But the submission to you, Sir, is that so far as this power is concerned, it must be confined to provinces only. If it is made to affect the sovereignty of the Rulers, I submit there would be a clash. The Congress Party times without number have stated that so far as the sovereignty of the people is concerned it is not going to be affected. His Excellency the Viceroy in the statement that he made on 25th instant said that so far as the Rulers are concerned, they need not apprehend any danger. It was argued that so far as this right is concerned, it will confine itself to Federal subjects. Yesterday we discussed Part VI and there, Clause I runs:

“The Federal Parliament in legislating for an exclusively Federal subject may devolve upon the Government of a Unit, whether a Province, an Indian State or other area or upon any officer of that Government the exercise on behalf of the Federal Government of any functions in relation to that subject.”

So when we say that so far as these Federal subjects are concerned, they could be administered by a Ruler, I don't see why we should take away from him the right of pardon, the right of commutation of sentences, etc., in criminal jurisdiction. So far as Mysore is concerned, His Highness the Maharaja has rarely exercised this prerogative. Everything is left to the High Court. He does not interfere at all. So, even supposing this power is going to be vested in him, there is no possibility of it being misused. In view of this, I cannot make up my mind to agree with the amendment proposed by Sir N. Gopaldaswami Ayyangar.

**Shri Gopikrishna Vijayavargiya** (Gwalior State): Mr. President, Sir, I have come to express my point of view here. I also come from a State and I think that in a Federation the sovereignty is divided and some of the sovereignty is given to the Federation also. Therefore, it is in the fitness of things that the right of pardon that is provided for the President of the Federation must remain and it is also not proper that Rulers should keep that sovereignty in their hands. When they are conceding their sovereignty in favour of the Federation in other matters, they should also concede this right. I therefore suggest that the amendment of Mr. Ananthasayanam Ayyangar and Sir N. Gopaldaswami Ayyangar must be accepted.

**Mr. K. Chengalaraya Reddy:** Mr. President, Sir, after bearing the lucid and convincing speech of Sir N. Gopaldaswami Ayyangar, I thought there would be no debate on the draft presented by him to the House, but I find that a certain difference of opinion has been expressed by one of my Hon'ble friends from Mysore. It will be seen that the draft, as it was put in the memorandum originally, was a very comprehensive one. It extended the right of pardon, etc., to all offences and it appeared to vest comprehensive powers in the President of the Federation, but I was one of those who thought that even the draft clause as it stood read along with Clauses 8 and 9 did not really give that comprehensive power but that power had been governed by certain conditions. But an amendment was tabled by certain representatives from the States that this power of right of pardon, etc., to be vested in the President should be confined to offences committed in the provinces. Well, Sir, as a counterblast to that, if I may use that word, I had tabled an amendment that this power should be vested in the President in relation to offences against Federal Laws.

Sir, I view the draft put forward by Sir Gopaldaswami Ayyangar as a compromise draft which should satisfy all sections of the House. Well, Sir, we should not be carried away by loyalties which have been existing in this country till now. New loyalties are coming into being. When we are contemplating the loyalties to the States from which we come, let

us not be oblivious to the fact that we have to be loyal to the Federation which we are creating now in this country (*hear, hear*). Our loyalties will have to undergo a change; there must be a harmonising of our loyalties. Let us remember that the strength of the Units consists in the strength of the Federation and the strength of the Federation also consists in the strength of the Units. The two are reciprocal. Let us not run away with compartmental ideas and think of the strength of the Unit only or the strength of the Federation only. I would like to urge that we must think of the strength of the unit and the strength of the Federation as in integrated strength. To the extent to which the States concede to the Federation, to that extent they will have to give the right of pardon, etc., to the President, in respect of offences against the Federal Laws. I would even go to the extent of saying that the President of the Federation must be the Supreme authority in respect of offences against Federation Laws. So I urge that the amendment of Sir Gopalaswami Ayyangar, being a compromise draft, should be acceptable to all sections of the House. If I may say so, let us not be more loyal to the king than the king himself. Even the Rulers of the Indian States who are going to come into the Federation will do so with their eyes open and prepared to accept the Federation with all its implications, and not with all kinds of reservations. On one or two matters like this, Sir, we must be quite plain-spoken. Let us not try to evade these issues. With respect to the Federal subjects—I have in mind now only Defence, Foreign Affairs and Communications and with respect to offences against the Federal Laws, the supreme authority should be the President. This is the position which has got to be accepted if we view the whole problem from a liberal, statesman-like and patriotic point of view, and I do hope that no objection will be taken to the amendment moved by Sir Gopalaswami Ayyangar and which he has supported in such a lucid and cogent manner. I support his amendment without any reservation in the interest of the State, in the interest of the Federation and in the interest of India as a whole.

**Mr. M. S. Aney** (Deccan State): Sir, are the clause as well as the amendments under discussion?

**Mr. President:** Yes, the clause and the amendments.

**Sir B. L. Mitter:** Sir, I do not want to press my amendment and so ask leave of the House to withdraw it.

**Mr. President:** Does the House give Sir B. L. Mitter leave to withdraw his amendment?

**Mr. Himmat Singh K. Maheshwari** (Sikkim and Cooch Behar States): But Sir, there are others who have similar amendments, but have not moved them because Sir, Mitter had moved his. Can I speak a few words, Sir?

**Mr. President:** Certainly.

**Mr. Himmat Singh K. Maheshwari:** Sir, I heard the admirable speech of my *Guru* Sir Gopalaswami Ayyangar with great attention and respect but with due deference to him, I must say that I do not stand convinced. The main argument I think, which he made was that because the Governors of the Provinces will not have the power to grant pardon, the existing power of pardon enjoyed by the Rulers of the States should also be curtailed or withdrawn.

**The Honourable Sir N. Gopaldaswami Ayyangar :** Sir, I am not sure that I put it in that form.

**Mr. Himmat Singh K. Maheshwari :** I stand corrected. He seems to think that this was more or less a question of sensitiveness. On that point I am inclined to agree with him. After all, within the borders of the State the dignity of the Ruler has to be maintained and if you take away from him the power of dispensing justice which he had hitherto been enjoying that dignity is adversely affected, even within the orders of the State. In his Press Statement of the 5th July, the Honourable Sardar Patel gave the assurance to the Princes that our common objective should be to understand each other's point of view and to come to decisions acceptable to all and in the best interests of the country. In the light of this assurance, Sir, I venture to suggest that the framers of the draft should reconsider the entire position once more and see if a happy *via media* cannot be arrived at. The difficulty arises mainly in respect of one matter. The courts which will try the cases under the Federal Law will be the State Courts. The State Court convicts a person of an offence under the Federal Law and the conviction is upheld by the High Court of the State and then at the end of all this, an outside authority grants pardon. In such a case, there is going to be a certain amount of complexity and a certain amount of uneasiness and possibly clash. In order to avoid this, Sir, it seems to me desirable that the constitutional experts should put their heads together once more. I, for one, do not desire a settlement or decision on this matter which would leave any sense of unpleasantness or which would cause any misunderstandings specially because some of the speakers before me hinted or suggested from their speeches that there was certain amount of excitement in the matter. So far as offences under the ordinary law are concerned, the question of powers does not arise at all. The original draft took away even that power. Now the draft has been amended and it has been made clear that offences under the ordinary laws shall remain exclusive concern of the Rulers and the pardons under the ordinary laws of the land will remain the exclusive concern of the Rulers. But even this does not improve the position substantially. In the amended draft there is a clause which runs thus:

“Such power may also be conferred on other authorities by federal law.”

It appears to be the intention that these powers may be conferred concurrently on the Governor of a Province also. So far as the Rulers of States are concerned, there can be no question of conferring any power on them because they already exercise such power. In the light of this clause, therefore, it becomes all the more necessary to re-examine the entire position. I shall feel most grateful if the House will agree to a postponement of this clause to enable every one to reconsider his attitude.

**Mr. K. M. Munshi (Bombay: General):** Sir, this is a matter of great constitutional importance and I submit it cannot be discussed from the point of view only of the rights of the Rulers of States or the Governors of Provinces, or, for the matter of that either the Criminal Procedure Code or the provisions of the present Government of India Act. As a matter of fact, Sir, as is well known, in a federation a citizen is related directly with the centre as regards his rights and obligations. The allegiance of every citizen, whether he is in in Indian State or in a Province, will be direct so far as the Union is concerned. Federal Laws will operate upon every citizen directly, and an offence in relation to such a law is not merely an offence against the State or the Province; it is an offence against the Federal Government. And therefore a reprieve or pardon

must, as a matter of constitutional principle, vest in the head of the Federation, that is, the President. And to that extent, I submit, the position is incontrovertible.

All the acceding States, when they come into the Federation, form part of the Union, accepting the operation of Federal Laws in their States. They accept to that extent that the Federal Government is supreme in the sphere of Federal Law and the President, as representing the Federal Government, can alone be the last, and also the first authority who can grant reprieve or pardon. That is why in the American constitution as is well known, the President has been authorised to grant reprieve or pardon for offences against the United States.

A similar provision, I submit, is not only necessary from the point of view of constitutional principle but also of expediency. Sir, the position is this. My Honourable friend Sir Gopaldaswami Ayyangar, has referred to the Income-tax laws. But there may be other federal laws—laws relating to extradition, to naturalisation, to defence and external affairs, to treason against the Federal Government—which are matters of the most vital importance to the existence of the Centre; and therefore the power of pardon cannot be given. I submit, to anybody except the head of the Federal Government. If the right is given to either the Ruler of a State or a Provincial Governor, the consequences will be, in a contingency, disastrous. Take for instance this. In principle the Governor or the Ruler—because they will be in the same position—will be entrusted with a part of the prerogative, which must vest in the head of the Union as a whole and any part of it. This, I submit, is inconsistent with principle. But apart from that there will be an inequality of treatment. Supposing in province 'A' the responsible ministry takes a particular view and advises the Governor to release a particular person; there is no appeal from it. But then in another province a different view is taken. Therefore, for the same offence you will find one provincial Governor giving pardon and in the other the Governor not giving a pardon. And let us not assume that the Rulers of States are going to be for ever and ever absolute little sovereigns that they think they are now. Many States have introduced an element of responsibility; I have no doubt in my mind that the general progress of the country will soon compel every State to have some element of responsibility in its Government. And when that comes, it is not the Ruler who will exercise the right of reprieve and pardon but the Ministry of the State who will advise the Ruler, which will give a pardon. In a conceivable instance, therefore, it may be that it will not suit a Province or a State to allow a particular kind of criminal to remain in jail. Take a case of war; it has happened in Ireland and England but I do not want to go into cases. It has happened very often in War that different views have been taken in regard to certain offences against the State. What would happen if, against the desire and against the policy of the Centre, the heads of the units or the unit ministries take upon themselves to grant, reprieve or pardon? If the policies of the State and the Centre are of different character and the former want to grant a reprieve for a set of offences—and reprieve, as you know, means postponement of a sentence—and if this power is not with the President but vested in the Governor or a Ruler, serious complications will arise. Therefore, I submit that a crime against the Federal Government is, really speaking, based upon the loyalty of each citizen to the Federal Government as a citizen of the Union as a whole. Therefore, pursuing that principle, the power of reprieve and pardon must vest in the President of the Federal Government and it cannot be parted with.



[Mr. K. M. Munshi]

With regard to other matters, Mr. Ananthasayanam Ayyangar's amendment is there. If members desire that the provinces should have concurrent power with the President in regard to death sentences there is no difficulty. With regard to the States, I, for one, am not very keen that with regard to State laws the President should be vested with any concurrent power. But we must not forget a very important fact. There are States small and big. All the acceding States are not of the size of the large States whom you see represented on the front bench here. There are States which under the existing machinery of things are not entitled to pass a death sentence without the consent of some representative of the Paramount Power. Many small States, I know as a fact, even when they pass a death sentence, are subject to influence being brought to bear upon them by the representative of the Paramount Power. Therefore it is to be considered by the country as a whole, whether very small States who do not enjoy such power, have to be given an unlimited power of passing death sentences and granting reprieve and pardon at their sweet will and without any control. These are complications on which there may be reference to a committee to be discussed fully. But on the first and fundamental question I submit, it is interfering with the direct allegiance of a citizen to the Federal Government to take away the power from the President to grant reprieve and pardon in all cases relating to federal laws. That, Sir, is all I have to submit.

**Sir Alladi Krishnaswami Ayyar:** Sir, I should like to say a few words in support of the proposition so ably moved by Sir Gopaldaswami Ayyangar and also in support of the amendment of Mr. Ananthasayanam Ayyangar. In the first place I am happy to note that the popular representatives of some of the States have come forward and have given their support to this proposition, namely, that it is a natural consequence of the federal system that the President of the Federation must have the inherent right of pardon.

**An Honourable Member:** Sir, may I know the insinuation behind the phrase "popular representatives"? Are the others unpopular?

**Sir Alladi Krishnaswami Ayyar:** I do not mean to say that the others are unpopular representatives but I do not recognise that officials are popular representatives because I believe that in the representation there are divisions in the case of certain States, between certain representatives of rulers and representatives of the people. Both of course represent the State but from a practical and commonsense point of view there is a different between the two sets of representatives. You may take it with that qualification or amendment if you like; but there is no denying the fact that there is a very great distinction between these popular representatives in the sense in which I use that expression and all representatives selected by the Government or the ruler.

**Mr. H. R. Guruv Reddi (Mysore State):** We are all elected people and not nominated people.

**Dr. B. Pattabhi Sitaramayya (Madras: General):** I rise to a point of order. These are collateral issues. I wish that side-issues are not raised and discussed and that you, Sir, may stop such a thing.

**Sir Alladi Krishnaswami Ayyar:** The States are entering as members of a Federal Union.

**Sir B.L. Mitter:** On a point of order, Sir. I have asked for leave to withdraw my amendment. Therefore the argument whether the States should have this power or not need be pursued.

**Sir Alladi Krishnaswami Ayyar:** Some speeches have been made, by the representatives of the Kathiawar States for instance, that the President should not have this power.

**Mr. President:** The difficulty is that although Sir, B.L. Mitter has asked for permission of the House to withdraw his amendment, one Member has objected to this leave being granted. The matter has rested there.

**Sir Alladi Krishnaswami Ayyar:** If the amendment had been permitted to be withdrawn, most of the speeches made, including that of Mr. Munshi, would have been out of order. If there really is common agreement on the part of all, there need not have been a debate at all.

The first principle of a Federal system is that the Federal law is binding upon every citizen and there is a direct relation between the citizen and the Federal Government. And when there is a breach of that Federal law, the representative of the Federation, namely the President of the Federation, must have the inherent right to pardon any offence against the Federal law. That is the principle of Sir N. Gopalaswami Ayyangar's amendment. There is no point in raising any issue as to sovereignty, because whatever the States might otherwise be, when once they accede to the Federation, there is a *pro tanto* cession of sovereignty in regard to the subjects ceded to the Union. The States may console themselves that in regard to all other matters they have plenary powers of sovereignty, but, to the extent they cede to the Union they cease to be sovereign in respect of that matter. It is not *infra dig* for any State or State people to think that there is a restraint on sovereignty in that regard, because that is the very essence of a federal compact. The great states of the American Union are still sovereign in many respects; but they are not sovereign in the federal sphere. That is the accepted principle in all Federal constitutions. The amendment here refers only to offences against the Federal laws. If any one has any objection to it, it must be the Provinces because up to now, even in regard to Federal subjects, the Provincial Governments had the power of pardon. Only in order to bring the States into line with the Provinces on a Federal basis, the provincial representatives are willing to let the power of pardon in regard to Federal subjects being exclusively vested in the President of the Union. If there is a concession it is a concession on behalf of the Provinces. They are giving up a right which they have been hitherto exercising under the recent Government of India Act. At the same time let it be clearly understood that when the Provincial Constitution is framed, there should be the power of pardon vested in the Provincial Governors in so far as the concurrent subjects and the subjects in the Provincial list are concerned. There must be inserted a corresponding provision in respect of vesting the power of pardon in the Heads of the Provincial Governments so far as these subjects are concerned. Sir N. Gopalaswami Ayyangar has given an assurance, in the sense in which any spokesman in respect of any proposal can give, that this matter will be taken up at a later stage and an amendment moved in regard to that matter. This is so far as the provincial sphere is concerned.

Then the only remaining point is about death sentences. It was felt that, though logically you need not make any exception in regard to death sentences, having regard to the fact that a citizen of a province

[Sir Alladi Krishnaswami Ayyar]

has enjoyed this privilege up to the present day, there is no reason why he should be deprived of that privilege of invoking the aid both of the Centre and Province. That is the spirit of Mr. Ananthasayanam Ayyangar's amendment which I support.

**Mr. Naziruddin Ahmad:** Mr. President, Sir, I wish to deal with only one aspect of the subject which has created some amount of subdued heat. It is that we are considering the case of those States who are acceding to the Federation in regard to the three subjects of Defence, External Relations and Communications. It is the principle of all Federal constitutions that where there is any subject vested in a Federation the offences relating to that subject should also be within its jurisdiction. There are certain taxes which are necessary to be made over to the Federation in order to enable it to work those subjects vested in the Federation. As a matter of fact offences relating to those taxes should also naturally be dealt with by the Federation.

Now, Sir, I submit that when a State accedes to the Federation that State absolutely surrenders all its sovereignty and powers to the Federation and therefore, by necessary implication, it surrenders also its jurisdiction over offences relating to certain subjects and the offence against the taxation in relation to those subjects. If this be the case it is a voluntary act of cession. There should be no misunderstanding that this cession of power includes also the cession of sovereign rights as to pardoning and commuting of offences. In these circumstances I beg to submit that the whole controversy and the sentimental outbursts have arisen only out of a misunderstanding. I submit that if the problem is looked at from the point of view of cession of certain necessary powers, then of course it follows as a corollary that the power of pardon and other things must reside in the President of the Union. This is all I have to say on this subject.

**Mr. Satyanarayan Sinha** (Bihar: General): Sir, the question may now be put.

**Mr. President:** The question is:

"That the question be now put."

The motion was adopted.

**The Honourable Sir N. Gopalaswami Ayyangar:** Sir, I have very little to say by way of replying to the debate. The points that were raised by some members in criticism of the amendment that I had moved have been very satisfactorily answered by other members. So there is really very little, left for me to say.

As regards Mr. Ananthasayanam Ayyangar's amendment, there are only two points which need be mentioned. One of them is that, if his amendment is confined to the provinces alone as he has suggested, it would introduce a distinction between the provinces and the States. That is number one. The second point that I might mention is that we shall be taking away from the provinces some more of the powers which my amendment would have conferred exclusively upon them but that is a

small matter. If the House agrees that in the case of death sentences there should be concurrent authority for the President of the Federation in respect of provinces alone, I for one will not object to it. We shall leave the States alone, to take their own course in this matter.

**Mr. President:** I will now put the amendments to the vote. The first amendment is that moved by Mr. Ananthasayanam Ayyangar that at the end of amendment moved by Sir Gopaldaswami Ayyangar the following be added:

“Where any person has been sentenced to death in a province, the President shall have all such powers of suspension, remission or commutation of sentences as are vested in the Governor of the province.”

The amendment was adopted.

**Mr. President:** Then, I will put to vote the amendment of Sir Gopaldaswami Ayyangar, as amended by Mr. Ananthasayanam Ayyangar.

The amendment was adopted.

**Mr. President:** I will put the original clause as amended, now, to vote.

Clause 7, as amended, was adopted.

Clause 14

**Mr. President:** We all now take up Clause 14.

**The Honourable Sir N. Gopaldaswami Ayyangar:** Sir, I have already read this clause out to the House, and I do not think it is necessary for me to read it out again. A very large number of amendments had been tabled in respect of this particular clause, and naturally an attempt has been made to see if the various points of view represented in these amendments could be brought together and a sort of agreed arrangement placed before the whole House for unanimous acceptance. I have taken the liberty, Sir, of sending notice of an amendment this morning which I think represents an agreed solution of the difficulties, and if it is the wish of the House that I move that particular amendment and, if it is passed, the other amendments need not be moved, I am prepared to move it.

**Mr. President:** Please move it. Or do you think that we should take up the other amendments?

**The Honourable Sir N. Gopaldaswami Ayyangar:** If this is carried, I think there will not be any necessity for the other amendments to be moved.

Sir, the amendment which I beg to move is this:

“That for items (a), (b) and (c) of sub-clause (1) of Clause 14, the following be substituted:

‘(a) The strength of the Council of States shall be so fixed as not to exceed one half of the strength of the House of the People. Not more than 25 members of the Council shall be returned by functional constituencies or panels constituted on the lines of the provisions in section 18(7) of the Irish Constitution of 1937. The balance of the members of the Council shall be returned by constituencies representing Units on a scale to be worked out in detail:

Provided that the total representation of Indian States does not exceed 40% of this balance.

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*Explanation.*—A Unit means a Province or Indian State which returns in its own individual right members to the Federal Parliament. In the case of Indian States which are grouped together for the purpose of returning representatives to the Council of States a Unit means the group so formed.

(b) The representatives of each Unit in the Council of States shall be elected by the *elected* members of the legislature of such Unit and in cases where a legislature consists of two Houses by the *elected* members of the Lower House of that legislature.

(c) The strength of the House of the People shall be so fixed as not to exceed 500. The Units of the Federation, whether Provinces, Indian States or groups of Indian States, shall be divided into constituencies and the number of representatives allotted to each constituency shall be so determined as to ensure that there shall be not less than one representative for every 750,000 of the population and not more than one representative for every 500,000:

Provided that the ratio of the total number of Indian States' respectively to their total population shall not be in excess of the ratio of the total number of representatives for the Provinces to their total population.'”

“2. That in sub-clause (1) of Clause 14, following new item (e) be inserted:—

‘(e) The fixing of the actual strength of the Council of States and of the House of the People. The distribution of the strength so fixed amongst the Units of the Federation, the determination of the number, nature and constitution of functional panels or constituencies for the Council of States, the manner in which the smaller State should be grouped into Units for purposes of election to the two Houses, the principles on which territorial constituencies to the two Houses should be delimited and other ancillary matters shall be referred back to and investigated by the Union Constitution Committee. After such investigation, the Union Constitution Committee shall submit to the President of the Constituent Assembly its recommendations as to the provisions relating to these matters which should be inserted in the draft text of the Union Constitution.’”

Sir, I wish only to draw attention to the more important aspects of this draft amendment. Sir, the first point to which I should like to make a reference is that in this amendment we are definitely fixing the strength of the Council of States and in doing so we say that that strength should not exceed one half of the strength of the House of the People. I think Sir, the House will agree that that is a fair proportion to fix. Now out of this strength that we so fix we propose to allocate 25 members to functional constituencies. In the draft, as originally placed before the House, it will be remembered that ten of the seats were to be filled by nomination by the President in consultation with universities and scientific bodies.

It has been felt by a very large number of people that that is not a sufficient provision for the purpose of getting on to the Council of States people who may not belong to universities or scientific bodies, but who on account of their connection with very important sides of the Nation's activity, deserve to be on a body of that description. In this connection a reference has been made to Section 18 (7) in the Irish Constitution. As you know, the bulk of the Senate in the Irish Constitution is filled by functional constituencies of this description. These constituencies relate to the representation of culture, education, of trade and commerce, of agriculture, of labour, of social services and various other national activities of that description. Now the one important difference between the provision in the Irish Constitution and the provision that is proposed to be made here is that that principle will be applied only to a very small number of members of the Council of States. If we fix the maximum strength of the House of the People at five hundred, the maximum strength of the Council of States can only be two hundred and fifty. If out of that we take twenty-five for being filled by constituencies of this description, it only means about ten per cent of the

total strength, so that we retain the essential character of the Council of States, as originally planned. An overwhelming majority of members of the Council will be returned by units more or less on a territorial basis, but a very small number not exceeding ten per cent will be returned by constituencies of this special description. There is also another limitation that we have placed on the representation of Indian States in the Council of States. This amendment says that the total representation given to Indian States should not exceed forty per cent of the strength of the Council of States minus the number allotted to special constituencies.

Then, Sir, I would refer to item (b) in this new sub-clause. It practically reproduces item (b) in the original clause with this one important difference, namely, that the election should be by the elected members of the legislatures and that, if a unit legislature happens to have two Houses, the electorate will be the elected members of the Lower House of that legislature. Perhaps I might explain that I have retained the description 'Lower House' here in keeping with the description that has been used in other parts of this particular draft. The idea is not to retain this description of the Chamber that we all of us have in mind, but to find another description which would not be open to the same criticism.

Then, Sir, with regard to the House of the People the maximum strength is fixed at five hundred and the limits of one million and 7,50,000 which you find in the existing draft have been reduced to 7,50,000 and 500,000. Incidentally this accepts a number of amendments notice of which has been given which are more or less in the same terms.

Then, Sir, you come to the proviso to item (c). Perhaps some people might consider this is not very necessary, but, in order to allay fears, perhaps suspicions, it has been decided that it is desirable to put in a Proviso of this description. The House of the People is essentially a Chamber whose composition is based entirely on the population and it is only reasonable that the ratio which the number of Members representing the Indian States bears to the total population of Indian States should not exceed the ratio which the number of seats for the Provinces bears to the total population in the Provinces. So I do not think it needs any justification. Any special treatment which we desire to give to units of the Federation, whether Provinces or Indian States—that treatment will be provided for in the composition of the Council of States.

Then, Sir, having stated these general principles as regards the composition of the two Houses, it is necessary that they should be elaborated and should be put in a form which could go into the draft Constitution for the future. A good deal of spade work will have to be done in this connection, fixing the actual strength of the two Houses, the way in which that strength should be distributed amongst the units, the kind and composition of the special constituencies and the principles on which territorial constituencies in Indian States should be delimited—all these are very important things on which the Constitution will have to lay down certain fundamental principles and for that the purpose I have introduced an additional item (e) which assigns to the Union Constitution Committee the task of investigating these problems in some detail and then proposing clauses or sections which could be embodied in the new draft Constitution.

That will certainly come up before the House for discussion. The Report of the Union Constitution Committee will be made to the President

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and then the Report becomes really the property of the House. If it is so decided that this report should be discussed in the House before the actual recommendations of the Committee are put into the draft text, that discussion can be held at the future session. But if the House should agree that the recommendations of the Union Constitution Committee as regards these matters can straightway go into the draft, text of the Union constitution, the House will still have an opportunity of examining the merits of these provisions when it comes to debate the text of the constitution.

Sir, I move this amendment.

**Mr. President:** I have got a number of amendments to this clause. I shall take these amendments now one after another.

(Messrs. Jagat Narain Lal, H. V. Pataskar, B. M. Gupte, R. M. Nalavade, Seth Govind Das and G. L. Mehta, did not move their amendments, Nos. 232 to 237.)

**Dr. Mohan Sinha Mehta** (Udaipur State): I withdraw my amendment (No. 238).

**Col. B. H. Zaidi** (U.P. States): I withdraw the amendment (No. 238).

**Maharaj Nagendra Singh** (Eastern Rajputana States): Mr. President, Sir, the amendment of Sir Gopaldaswami Ayyangar meets the view point of small States admirably and he ought to be congratulated on this amendment because it creates effective democracy. After all, Sir, the greatness and balance of a constitution lies in its portraying with the minutest attention to detail the various entities and interests that lie in the country at large. The amendment will certainly achieve this object and I wholeheartedly support it. I, therefore, withdraw my amendment, Sir, but I request that as far as the consideration of the allocation of seats *inter se* between the States is concerned there should be some representatives of the small States in the Union Constitution Committee. The grouping of small States and the formation of constituencies will affect these States vitally and it is therefore important from the point of view of these States that there should be a representative of the small States in the Union Constitution Committee to express their views.

I withdraw my amendment (No. 239).

(Messrs. Rai Saheb Ragho Raj Singh and H. J. Khandekar did not move their amendments, Nos. 239 and 240.)

**Shri Himmatsingh K. Maheswari:** I withdraw amendment No. 241. (Amendment Nos. 242 to 260 were not moved.)

**Shri Vishwambhar Dayal Tripathi** (United Provinces: General): \*[Sir, I do not propose to move my amendment as it is covered by the resolution of Sir Gopaldaswami Ayyangar.]\*

(Amendment No. 262 was not moved.)

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\*[ ]\*English translation of Hindustani speech.

(Sir V. T. Krishnamachari did not move his amendment No. 263.)

**Mr. President:** I take it that none of the other Ministers are moving.

**Sir V. T. Krishnamachari** (Jaipur State): Yes.

(Amendments Nos. 264 to 271 were not moved.)

**Mr. Naziruddin Ahmad** : Mr. President, Sir, I beg to move:

“That sub-clause (2) of Clause 14 be deleted.”

The simple purpose of this amendment is that the sub-clause refer to a schedule which is not yet in existence. If we agree to sub-clause (2) it would be signing a blank cheque or a transfer deed without a schedule. I submit that this is a difficult thing to do.

Then, I find after the amendment of my Honourable friend, Sir Gopalaswami Ayyangar this amendment is in an anomalous position. After we gave notice of a large number of amendments the original clause has been re-drafted and put forth here on the floor of the House. We have had no opportunity of considering the draft. I have no particular objection to the revised draft which has been submitted for consideration. But still I should think that perhaps it would have been better to give us some time to consider this important subject. A draft of such intricate nature like this, containing important constitutional principles cannot be easily handled at a moment's notice. I therefore respectfully submit that, as in any other important case, some time should be given for consideration of the subject and then it would be easy for us to submit amendments. It may be that we would fully agree with the principles, but still, for the sake of safety, it would be better to give us some time. I hope the Honourable member will kindly consider the difficulty in which some of us have been placed and postpone the subject for further consideration. This is a very important subject and its importance justifies the suggestion.

(Amendments Nos. 273 to 278 were not moved.)

**Prof. Shibbanlal Saksena** (United Provinces: General): Mr. President, Sir, my amendment to sub-clause (4) of Clause 14 runs as follows:

“That in sub-clause (4) of Clause 14, for the word ‘one third’, the word ‘one half’ be substituted.”

In accordance with the present provision in sub-clause (4) of Clause 14, one-third of the members will retire every second year. Now according to the time-table which we have laid down, the life of the House of the People shall be of four years' duration, and a new House of the People as well as new provincial legislatures shall be elected every fourth year in the normal course of things. What I want is that in the Council of States as well instead of one-third of the members being elected every second year, one-half of the members should be elected every second year. In this manner we shall be having a new Council of States every fourth year. It may be argued that the Lower House may be dissolved before their full terms expire, and the four year cycle may not recur. But dissolution, I am sure, will not be a normal feature in the life of the legislatures; and even if one or two legislatures in the provinces are dissolved before their full terms, the four year cycle will not be materially disturbed at least during the present century.



**An Honourable Member:** On a point of information, is he going to move the amendment?

**Prof. Shibbanlal Saksena:** Yes, Sir, I move it.

According to the amendment of Sir N. Gopaldaswami Ayyangar the States will have a fairly large representation in this House and, as is well known the Lower Houses of the States have a majority of nominated members, so a majority of the members will be Rulers' representatives. Therefore what I want is that this House which will have a fairly large number of reactionary members, should not be a House which should be continued for very long intervals. I want at least half of this should change every second year and then it might not be so reactionary. I have already voiced my opposition to second Chambers before but if we are to have them, at least we should have a change of half of the members every second year so that in the 4th year the whole Council of States will be changed.

(Amendment Nos. 280 to 299 were not moved.)

(Amendment Nos. 13 to 16 in Supplementary List No. I, Amendment Nos. 10 & 11 in Supplementary List No. II, and Amendment Nos. 4 to 6 in Supplementary List No. III were not moved.)

**Begum Aizaz Rasul** (United Provinces: Muslim): Sir, the amendment standing in my name is—

“That in sub-clause (1) (d) of Clause 14, the following be added at the end:—

‘by a system of proportional representation by single transferable vote.’”

Sir, I do not propose moving this amendment at the present moment in view of the amendment moved by Sir N. Gopaldaswami Ayyangar. I hope that this very important aspect of the question as to the method of election to the Council of States will be considered by the Union Constitution Committee in order to safeguard the interest of minorities. I do not wish to move this amendment at this time, Sir, because of the great possibility of getting a negative vote on it in case the House rejects it but I reserve to myself the right of moving this amendment later on, if need arise.

**Mr. President:** There is another amendment in your name.

**Begum Aizaz Rasul:** There is another amendment standing in my name:

“That in sub-clause (4) of Clause 14, for the word “second” the word “third” be substituted.

Sir, the clause will then read:

“The Council of States shall be a permanent body not subject to dissolution, but as near as may be, one-third of the members thereof shall retire in every third year in accordance with the provisions in that behalf contained in Schedule—”

Sir, my object in moving this amendment is that I feel that the period of two years is a very short period for a Legislator. As soon as he becomes conversant with the business, gets to know legislative work, and settles down to it he will have to retire. To my mind this is not very fair and he ought to have a slightly longer period in which to show his worth and do justice to the House to which he is elected.

Sir, if my amendment is accepted it will mean that the House being a permanent body, one-third of the members retiring every three years, it will be a rotation of nine years. As most Honourable Members are aware, this is the system at present prevailing under the Government of India

Act of 1935. Therefore, people in India are not unfamiliar with this system. I feel that this system, as it has been working for the last ten years, in this country, has proved absolutely satisfactory. Sir, in the constitutions of most of the western countries there are two Houses of the Legislature; Members of the Upper House are mostly either life members or the life of that House also synchronises with the life of the Lower House. It is only in the United States Senate that one-third of the members retire every second year. I however feel that it is not necessary that we in India should try to copy the system that prevails in the United States because, for one thing, the members of the U.S. Senate are chosen by popular vote whereas for the Council of States that is envisaged by the Union Constitution these members will not be elected by direct election but will be elected by the members of the Lower House. Sir, another strong point that I wish to make in support of my contention is that I do not think that the members of the Lower House should elect members to the Council of States twice in their term of membership and I think this right should only be exercised once. If this provision stands as at present, and if the members of the Upper House have to retire every second year, that means that the members of the Lower House will have the right to elect twice in their lifetime members to the Upper House. With these few words, I commend my amendment to the consideration of the House. I feel it is a very fair amendment and hope it will be accepted.

**Mr. President:** The clause and the amendments are now open for discussion.

**Mr. Jainarain Vyas (Jodhpur State):** Mr. President, Sir, I rise to support the fresh proposals recently put forward by Sir N. Gopaldaswamy Ayyangar, but while doing so, I would like to offer a few remarks on the subject matter. When we support these proposals, it should not mean that we feel that the proposals will favourably affect the people of the Indian States. We support these proposals purely on political grounds. When these proposals are accepted, fourteen more States will come in the Lower House. These 14 States will include four States of Kathiawar, seven of the Eastern States, one from Rajputana, one from Assam and one from Simla Hill States. I am very glad to observe that four maritime States, Junagadh, Nawnagar, Bhavnagar and Cutch will find their place in the Lower House on account of these proposals and the border State of Manipur will also come in. So, from that point of view, it is a very good thing to increase the membership of the Lower House as has been done. Sir Gopaldaswamy Ayyangar while putting forward Clause I (b) said that only elected members of the Legislature in the Lower House will be able to vote for the election of the Lower House. I mean the elected members of the Legislative Assemblies of the States. There is some confusion in the words "elected members" because when we think of the elected members of the Lower House of our Union, we think that these are elected on the basis of adult franchise, but in Indian States things are not so. I know of a State in Punjab where the son of a Ruler is an elected member of the Assembly and his wife also finds a place among the elected members, and Sir, they are unfortunately both Ministers or rather, they are "popular ministers" of the Assembly. So this is how elected members and elected "popular ministers" come in through the Lower House of the Assembly in States. There is a State which has got an elected member on the basis of four members in the constituency. So he is also an elected member. I know of another State which has got ten jagirdars out of about fifty elected members in the Lower Houses or in the Legislative Assembly.

That way, the elected members of the Assembly do not mean really elected representatives because they are not elected on popular franchise or on adult franchise. Sir, I want to bring these instances to your notice

[Mr. Jainarain Vyas]

and through you, to the notice of the House, so that when a draft is being prepared those who are at the helm of affairs in drafting the Constitution will see that truly elected members come in, not members elected on bogus franchise in bogus legislatures as they exist in some of the States.

One thing more I would like to bring to your notice and that is, then popular representatives of the States have got no place in the Union Constitution Committee of this House, and when the rules or clause are framed their opinion does not come up before the Constitution Sub Committee. I hope Sir, when there is a vacancy in the Union Constitution Committee, then claim of the popular elements will be considered and, if necessary, the strength of the Committee will be increased in order to find a place for the popular members from the States.

With these remarks, Sir, I commend Sir Gopaldaswamy Ayyangar's proposal to the House. I hope, Sir, my request will be considered when the real drafting is taken in hand.

**Pandit Hiralal Shastri** (Jaipur State): \*[Mr. President, I had no intention to participate in the debate today. But when Sir Gopaldaswamy Ayyangar stated that the amendment he was moving had the unanimous support of the House, I felt that I must say something about it.

With all respect, I ask Sir Gopaldaswamy as to how his amendment has the unanimous support of the House. So far as I know, all the representatives of the States people present in the House are of the opinion that the original proposal in the report of the Union Constitution Committee should stand. Again, I wish to know why the strength of the Upper and the Lower Houses should be increased. We have often passed a resolution in the all India States Peoples' Conference, that larger States should join the Indian Union separately while the smaller ones should join the Indian Union in a group. The standard and the qualifications we have fixed for the States joining the union are sufficiently high. According to our standard, a State with a population of 5 million and having a revenue of 30 millions can join the Union individually. We were satisfied to note that for election to both the Houses, the minimum population limit was fixed at a million. Many attempts were made and many amendments were brought in to reduce this limit to a quarter million but in vain. I clearly see that behind the proposed amendment, of reducing the limits of one million and 750,000 to 750,000 and 500,000 respectively, underlies the policy that some State, with a population of more than half a million may get representation not only in the Upper House, but also in the Lower House I do not like this. Therefore, I have not agreed to the proposal. There is no unanimous support of the House. Sir Gopaldaswamy Ayyangar possibly was the author of the original proposal- in the report and if it is true that he himself is moving amendment to the original proposal I do not think it proper to oppose him. However, I cannot but express my feelings in this connection. When our country is going to be politically a Union, in spite of the division, when differences between provinces and States are being removed, I do not think it proper that small States, should come into the Union as separate entities. I disapprove of the idea of small States coming into the Union as separate entities, for I know that if separate units of these

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\*[ ]\*English translation of Hindustani speech.

small States are formed, that would only be for the purposes of elections. I know that this will go contrary to the proposal of grouping and States will get all opportunities for coming in as individual units. If we intend that the small States should come into the union in groups, they should be allowed the minimum opportunity to exercise their franchise as individual units for election to this House. According to our original proposal only fifteen States were to participate in the Assembly elections as individual units. But because their representatives have been recognised and because of this and other amendments by the States, fifteen other States will now come in as individual units and this is the number of small States joining as individual units will be increased. Besides this, a provision has also been added. The amendment of Sir N. Gopaldaswami considers many vital matters of detail regarding the formation of units and delimitation of constituencies etc. This matter will go up before the Union Constitution Committee where the final decision will be taken on it, I am very sorry to have to say in this connection that so far no representative of the States people has been taken in the said Committee. However, this is not the point. We are discussing here a very important and vital matter and our decision will be placed before the Union Constitution Committee. Maharaj Nagendar Singhji has demanded here that the small States must be represented on this Committee. I do not know as to how many representatives will be taken but I must voice our demand that representatives of the States people must also be taken on this Committee. Many matters of great importance will be discussed in the Committee and decision thereon taken; and hence a representative of the States people must be there to voice their opinion. I give this particular warning to the House that the smaller States should not be individually allowed to come in as representatives of each separate unit. The more they are grouped the better it is. I have reasons to say this. However, I do not think it proper to go into controversies over this. One is greatly pained and astonished to hear of the atrocities and repression going on in those small States. The States people are very miserable on account of the atrocities of the authorities. Many of the States that have joined this Assembly whether individually or in groups feel as if they have obliged our leaders and the National Congress by doing so. I do not like to say any thing against it but in the manner the smaller and the bigger States have joined the Assembly, they feel as if they have been given a written authority to have absolute power over their people. Thus they have not only begun to exercise their absolute authority over the people but have also begun to oppress them. If we enquire into the important news of the States, appearing every day with pictures on the front Pages of the newspapers, we would find that great atrocities are committed on the people by the States authorities. This is not the proper time to say all this but I had to give vent to my heartfelt pain at some time. Syt. Vyas has just stated that the State authorities are generally interfering with elections. Therefore, I would like to draw the particular attention of Sir Gopaldaswami to this and request him to see that when the constituencies and the units are formed the smaller States do not come in as individual units in large numbers and that the view point of the representatives of the States peoples is also somehow secured.

I do not oppose the motion but wish to state that at least the voice of the States subject must not be ignored. I would also appeal to the Honourable the President to see that the representatives of the States subjects should be included in the Committee.]\*

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] \*English translation of Hindustani Speech.

**Mr. Satyanarayan Sinha:** The question be now put.

**Mr. President:** The question is:

“That the question be now put.”

The motion was adopted.

**Mr. President:** I shall now put the amendments. I shall first put the amendments of Sir N. Gopaldaswami Ayyangar. The question is:

1. That for items (a), (b) and (c) of sub-clause (1) of Clause 14, the following be substituted:

“(a) The strength of the Council of States shall be so fixed as not to exceed one half of the strength of the House of the People. Not more than 25 members of the Council shall be returned by functional constituencies or panels constituted on the lines of the provisions in Section 18(7) of the Irish Constitution of 1937. The balance of the members of the Council shall be returned by constituencies representing Units on a scale to be worked out in detail:

Provided that the total representation of Indian States does not exceed 40% of this balance.

*Explanation.*—A Unit means a Province or Indian State which returns in its own individual right members to the Federal Parliament. In the case of Indian States which are grouped together for the purpose of returning representatives to the Council of States a Unit means the group so formed.

(b) The representatives of each Unit in the Council of States shall be elected by the *elected* members of the legislature of such Unit and in cases where a legislature consists of two Houses by the *elected* members of the Lower House of that legislature.

(c) The strength of the House of the People shall be so fixed as not to exceed 500. The Units of the Federation, whether Provinces, Indian States or groups of Indian States shall be divided into constituencies and the number of representatives allotted to each constituency shall be so determined as to ensure that there shall be not less than one representative for every 750,000 of the population and not more than one representative for every 500,000 :

Provided that the ratio of the total number of Indian States representative to their total population shall not be in excess of the ratio of the total number of representatives for the Provinces to their total population.”

2. That in sub-clause (1) of Clause 14, the following new item (e) be inserted:

“(e) The fixing of the actual strength of the Council of States and of the House of the People, the distribution of the strength so fixed amongst the Units of the Federation, the determination of the number, nature and constitution of functional panels or constituencies for the Council of States, the manner in which the smaller States should be grouped into Units for purposes of election to the two Houses, the principles on which territorial constituencies to the two Houses should be delimited and other ancillary matters shall be referred back to and investigated by the Union Constitution Committee. After such investigation, the Union Constitution Committee shall submit to the President of the Constituent Assembly its recommendations as to the provisions relating to these matters which should be inserted in the draft text of the Union Constitution.”

The amendment were adopted.

**Mr. President:** There are some more amendments which were moved.

I shall put Mr. Naziruddin Ahmad’s amendment. The question is:

“That sub-clause (2) of Clause 14 be deleted.”

The amendment was negatived.

**Mr. President:** There is another amendment by Mr. Shibban Lal Saksena, which I shall put. The questions is:

“That in sub-clause (4) of Clause 14, for the word ‘one-third’ the word ‘one half, be substituted.”

The motion was negatived.

**Mr. President:** I shall now put the amendment moved by Begum Aizaz Rasul. The question is:

“That in sub-clause (4) of Clause 14, for the word “second” the word “third” be substituted.”

The motion was negatived.

**Mr. President:** I shall now put the original clause as amended by Sir N. Gopaldaswami Ayyangar’s amendment which has been adopted. The question is:

“That Clause 14, as amended, be adopted.”

The motion was adopted.

**Mr. M. S. Aney:** There is a note under this clause and in that note the different Provinces and States are named. I find among the names the name of the Central Provinces mentioned as ‘C. P.’ The name of the Province under the Act under which it was formed as “C.P. and Berar” That name is also reproduced in some other clauses which we have already passed. So I think this might be a clerical mistake. But I do want to bring this fact to your notice and to the notice of the House. When the final draft is made, if the Note happens to be there, the proper name of the Province should be given as “the Central Provinces and Berar.”

**Mr. President:** I think that is a slip because in the Schedule it is correctly stated.

#### Part X

**Mr. President:** We shall now take up part X.

**The Honourable Sir N. Gopaldaswami Ayyangar:** Sir, I may here request your permission for asking that the moving of this Part be postponed because some of the amendments have raised a very important issue as to what provision should be made for giving Provincial Legislatures some constituent power for amending the Constitution of the Province. That requires some consideration. Therefore, if you permit, we will take up this matter at the next session.

**Mr. President:** The consideration of Part X will be held over.

#### Part XI

**Mr. President:** We shall take up Part XI.

**The Honourable Sir N. Gopaldaswami Ayyangar:** The first clause in Part XI runs as follows:

“The Government of the Federation shall be the successor to the Government of India established under the Government of India Act, 1935, as regards all property, assets, rights and liabilities.”

I request your permission to move this clause with a verbal addition which would bring the terms of this clause up-to-date with reference to recent happenings. Since this clause was drafted, Parliament has passed an Indian Independence Act. Under the powers given by that

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Act, very comprehensive adaptations of the Government of India Act are being ordered by the Governor-General. So at the time we shall be bringing this new Constitution into force it will be the Government of India Act, 1935, as adapted. Therefore, if you will permit me to do so, I would move:

“That after the words ‘the Government of India Act, 1935’ in Clause I the words ‘as adapted under the provisions of the Indian Independence Act’ be added.”

**Mr. President:** Clause 1 has been moved with some alteration. We have got several amendments of which I have received notice.

**Shri K. Santhanam** (Madras: General): Sir, I want to know if that expression has been substituted.

**The Honourable Sir N. Gopaldaswami Ayyangar:** The Clause will read after my amendment as follows:

“1. The Government of the Federation shall be the successor to the Government of India established under the Government of India Act, 1935, as adapted under the provisions of the Indian Independence Act, as regards all property, assets, rights and liabilities”.

**Shri K. Santhanam:** I do not move my amendment No. 401.

**Mr. President:** The clause that has been moved as amended is this:

“1. The Government of the Federation shall be the successor to the Government of India established under the Government of India Act, 1935, as adapted under the provisions of the Indian Independence Act, as regards all property, assets, rights and liabilities.”

**Shri K. Santhanam:** The difficulty is that the Indian Independence Act must take precedence over the Government of India Act of 1935. Therefore, it will not be correct to put the latter first. The order will have to be reversed.

**Mr. President:** The 1935 Act is adapted.

**Shri K. Santhanam :** The Act in operation is the Indian Independence Act. The adaptation is under the Indian Independence Act.

**The Honourable Sir N. Gopaldaswami Ayyangar:** May I explain the point? After all, Sir, the Indian Independence Act is largely an enabling Act, the Constitution under which we shall work from the 15th August 1947 onwards will still be the Government of India Act, 1935, as adapted by the Orders which the Governor-General has been empowered to issue under the Indian Independence Act.

**Shri K. Santhanam:** I do not think it will be legally correct. We will be working under the Indian Independence Act or under the Government of India Act, 1935, in certain respects.

**Sir Alladi Krishnaswami Ayyar:** I think Mr. Santhanam. is right. The real Constitution will be the Dominion Constitution. We are adapting certain provisions of the 1935 Act to suit the Dominion Act. The future Government will be the successor of the Dominion Government.

**The Honourable Sir N. Gopaldaswami Ayyangar:** Sir, I bow to the legal opinion though I do not feel convinced, I doubt its correctness.

**Shri K. Santhanam :** Suitable arrangements may be made.

**Mr. President:** Though there is no difference in meaning, there is a dispute. You had better leave it to Sir N. Gopaldaswami Ayyangar to put it in proper form.

As Messrs. Nijalingappa, Krishnamoorthy Rao and Ananthasayanam Ayyangar are not moving their amendments, I will put Clause 1 of part XI to the vote.

The question is:

“That Clause 1, as amended, of Part XI be adopted.”

The motion was adopted.

#### CLAUSE 2

**The Honourable Sir N. Gopaldaswami Ayyangar:** Sir, I move:

“2. (1) Subject to this Constitution, the laws in force in the territories of the Federation immediately before the commencement of the Constitution shall continue in force therein until altered, or, repealed, or amended by a competent legislature or other competent authority.

(2) The President may, by Order provide, that as from a specified date any law in force in the Provinces shall, until repealed or amended by competent authority, have effect subject to such adaptations and modifications as appear to him to be necessary or expedient for bringing the provisions of that law into accord with the provisions of this Constitution.”

“These are necessary to keep the existing Acts in force.

(Shri Jainarain Vyas did not move his amendment No. 404):

**Mr. Naziruddin Ahmad:** Mr. President, I beg to move:

“That in sub-clause (2) of Clause 2, for the words ‘by competent authority’ the words ‘by a competent authority’ be substituted.”

Sir, this is only a drafting amendment.

**Mr. S. V. Krishnamurthy Rao (Mysore State):** Mr. President, this is only an enabling provision similar to the one provided for the Provinces. This has references to such of the States as accede to the Union. My amendment runs thus:

“That in sub-clause (2) of Clause 2, after the word ‘Provinces’ the following be inserted:

‘and such of the States as are parts of the Indian Dominion as per provision Section 2, Clause 4 of the Indian Independence Act of 1947’ ”.

I hope the Mover of the Clause will accept this amendment.

**Mr. President:** As there are no other amendments to this Clause and as no Member wishes to speak, Sir N. Gopaldaswami Ayyangar may reply to the debate.

**The Honourable Sir N. Gopaldaswami Ayyangar:** Mr. President, Mr. Naziruddin Ahmad’s suggestion is a drafting amendment. But I am not sure that it is a drafting improvement. I would rather retain “competent authority” in the place of “a competent authority”.

As regards the amendment of Mr. Rao, I think that if the representatives of Indian States are prepared to agree, I am prepared to accept it. But I am afraid the question will require to be very carefully examined before we can agree to it. I would rather that the clause is left alone and the matter examined later.



**Mr. President :** I will now put the amendments to the vote. The amendment of Mr. Naziruddin Ahmad is:

“That in sub-Clause (2) of Clause 2, for the words ‘by competent authority’ the words ‘by a competent authority’ be substituted.”

(The amendment was negatived.)

**Mr. S. V. Krishnamurthy Rao:** Sir, I withdraw my amendment.

**Mr. President:** Mr. Krishnamurthy Rao withdraws his amendment. I take it that the House gives him leave to withdraw it.

The amendment was, by leave of the Assembly, withdrawn.

**Mr. President:** Then I will put the clause to vote.

The motion was adopted.

### CLAUSE 3

**The Honourable Sir N. Gopalaswami Ayyangar:** Sir, Clause 3 runs as follows:

“Until the Supreme Court is duly constituted under this Constitution, the Federal Court be deemed to be the Supreme Court and shall exercise all the functions of the Supreme Court:

Provided that all cases pending before the Federal Court and the Judicial Committee of the Privy Council at the date of commencement of this Constitution may be disposed of as if this Constitution had not come into operation.”

That is to say, cases pending before the Judicial Committee at the inception of this Constitution will continue to be disposed of by that Committee. Sir, I see that there are certain amendments to effect improvements in this clause. I shall be prepared to accept the amendment of which Sir Alladi Krishnaswami Ayyar has given notice.

(Messrs. K. Santhanam, Biswanath Das and Thakur Das Bhargava did not move their amendments Nos. 407, 408 and 409.)

**Sir Jaspal Roy Kapoor** (United Provinces: General): I am not moving No. 410 in view of Sir Alladi’s amendment.

(Mr. R. K. Sidhwa did not move his amendment No. 411.)

**Sir Alladi Krishnaswami Ayyar:** My amendment runs in these terms:

“That for the Proviso to Clause 3, the following be substituted:

‘On and after the coming into force of this Constitution, the jurisdiction of the Judicial Committee of His Majesty’s Privy Council to entertain and dispose of appeals and petitions from any Court in the Union of India, including the jurisdiction in respect of criminal matters in the exercise of His Majesty’s prerogative shall cease and all appeals and other proceedings pending before the Judicial Committee of the Privy Council shall stand transferred to, and be disposed of by the Supreme Court. Further provision may be made by the Parliament of the Federation to implement and give effect to this provision.’”

Sir, in commending this amendment for the acceptance of the House I should like to make a few observations. Even in the British Commonwealth, judicial autonomy is recognised as necessarily incidental to the new status which the Dominions have attained. In Australia, there is no right of appeal at all except with the leave of the High Court of that country. In Canada, under recent legislation, the right of appeal from the Supreme Court of Canada both in civil and criminal cases has been abolished. In South Africa, under the South African Constitution, there is no right of appeal to the Judicial Committee. If that is the position even in regard to the Dominions within the British Commonwealth, it is inconceivable that there should, be any retention of jurisdiction in the judicial Committee after India has become a Republic and the Constitution we are enacting comes into force. There has necessarily to be an

automatic cessation of jurisdiction in regard to pending appeals. It is inconceivable that what is in effect a foreign Court should be in a position to reverse or modify the decisions of Indian tribunals. The Supreme Court to be established is the only final Court of Appeal for all India, and it is but proper that all pending cases should be transferred to the Supreme Court. The point has been raised in certain quarters whether we could direct the transfer of records from the Judicial Committee. All that we enact is that cases do stand transferred, that hereafter the Supreme Court will have the Jurisdiction to deal with all these cases. I do not believe that the Judicial Committee will fail to act in aid of our legislation. As a matter of fact there are very few original records in the custody of the Judicial Committee. If there is any difficulty in regard to procedure and other matters federal legislation, will be enacted. That is the object of the latter part of this amendment. I therefore ask the House to accept the amendment.

**Sri M. Ananthasayanam Ayyangar:** I am not moving my amendment No. 11 in supplementary List IV.

**Mr. President:** I think there is only one amendment now.

**The Honourable Sir N. Gopalaswami Ayyangar:** I accept the amendment of Sir Alladi Krishnaswami Ayyar.

**Mr. President:** The amendment is accepted by the Mover of the clause. I will now put it to vote.

The amendment was adopted.

**Mr. President:** I will now put the clause, as amended by Sir Alladi, to vote.

Clause 3, as amended, was adopted.

**Mr. President:** We have only two minutes now, and.....

**The Honourable Sir N. Gopalaswami Ayyangar:** There are only two or three clauses left.

**Mr. President:** If the wish of the House is that we should complete these clauses. I have no objection, but there is a meeting of the Advisory Committee at 2-30 P.M., and members might like....

**Sri M. Ananthasayanam Ayyangar:** Thinking that the Assembly would sit today only up to 1 o'clock, we have already booked our berths for today.

**Mr. President:** Does the House want that the consideration of the remaining clauses should be taken up in the next session?

**Many Honourable Members:** Yes.

**Mr. President:** Then the consideration of the remaining clause is held over.

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#### ANNOUNCEMENTS BY THE PRESIDENT

**Mr. President:** Before we disperse, I have some announcement to make. There was notice of a resolution by Rajkumari Amrit Kaur about Khadi being used for the National Flag. The notice of the resolution came, at a time when we could not call a meeting of the Steering Committee, and so we could not place it before the House. But I may inform the House that so far as this Constituent Assembly is concerned,

[Mr. President]

there will be no Flag used which is made of anything else but Khadi. It is also the policy of the Government which has been communicated to the Provincial Governments also that all National Flags should be made only of Khadi that is to say, of hand-spun and hand-woven cloth, whether it is of cotton, of wool, or silk or of any other material.

Yesterday, the House passed a resolution asking me to appoint a Committee to prepare a draft constitution for the Chief Commissioners' provinces, and I have pleasure in announcing that I have appointed the following Committee for that purpose:

Sir N. Gopaldaswami Ayyangar.

Dr. Pattabhi Sitaramayya.

Mr. K. Santhanam.

Mr. Deshbandhu Gupta.

Mr. Mukut Bihari Lal Bhargava.

Mr. C. H. Poonadha.

Mr. Hussain Imam.

There is one other important matter to which reference was made in the earlier part of the debate with regard to which I have to make certain announcements, *i.e.*, the Function on the 15th. The programme which we have thought of is this:

That on the night of the 14th and 15th just at midnight, we have a session of this House, and at that time just as the clock strikes twelve, we either start our Proceedings or end our Proceedings by which we take power under the New Act which has been passed and either by a Resolution or otherwise, we authorise the Leader of the House to proceed to Lord Mountbatten and to request him to accept the Governor-Generalship and thus regularise his appointment as Governor-General as being made at our request and the Leader of the House will also communicate to him at that hour the names of the Members of the Cabinet, which he will constitute. That will be the Proceeding at night. The next morning we have a session of this House at 10 o'clock here and that will be attended by the Governor-General and here we shall have some sort of a formal ceremony—the actual handing over of power to us.

**Mr. M. S. Aney:** On the 15th?

**Mr. President:** That would be the midnight of the 14th and the early morning of 15th.

**Shri Balkrishan Sharma** (United Provinces : General): That will be our D Day.

**Mr. President:** As regards the details of the programme for the night session or for the morning session, we have not yet worked out all the details, but I propose to work out the details in consultation with Members like Pandit Jawaharlal Nehru and some others who will be available here.

**Mr. B. Das** (Orissa : General): What about the Finance Committee in regard to financial distribution?

**Mr. President:** Let me first complete this thing.

As regards the admission of visitors, as Members are aware, we have very limited accommodation in this House. There has been a demand made on behalf of Members, that we should allow them to bring their own guests, of course, under the ordinary conditions of cards being issued by us. It will be necessary also to invite to that function representatives of foreign countries who are here, the Consular representatives and others and some of the higher Civil and Military authorities of the Government of India will have also to be invited. The Press will naturally like to be present in full strength on that occasion. It will therefore be very difficult to accommodate all who desire to come and attend the function, but I hope the House will leave it to us to work out some programme by which we shall accommodate, as fairly and equitably as possible, as many as we can.

**An Honourable Member:** Can two cards be issued for every Member?

**Mr. President:** If we allowed two visitors to each Member, and we do not allow anyone else even then we shall have no accommodation.

**Shri Gopikrishna Vijayavargiya:** At least one card for every Member.

**Mr. President:** On the 14th night visitor passes will be allowed on the usual conditions in the usual way.

**Shri Mahavir Tyagi** (United Provinces : General): Can you not kindly spare this House the part of the programme according to which we are required to invite Lord Mountbatten to be our Governor-General in future; because this House has never discussed that question; nor has the House passed so far, any Resolution, nor agreed to the idea of Lord Mountbatten being the Governor-General of India? The rest of the programme may proceed as it is.

**Mr. President:** If the Honourable Member is so anxious, I shall put this matter to the House for discussion. (*Many Honourable Members:* No, no). That was at least my impression, but if the Honourable Member wants it, I shall put it to the House.

**Mr. Shankar Dattatraya Deo** (Bombay : General): What is the proposition, we have not understood. Let us understand what is his proposal.

**Mr. President:** I had chalked out a Programme which I indicated in the earlier part of my statement. One Member says that we should not raise the question of Lord Mountbatten being the Governor-General because the House has not considered it. I said that if he is anxious, I shall put it to the House.

**Many Honourable Members:** No, no. It must be left to the President.

**Pandit Govind Malaviya** (United Provinces : General): Sir, without going into the merit of the question at all may I say that it seems to me that what the Honourable Member meant was that since that matter had been decided without the House having in any way been brought into it, we should not have the ceremony of the Leader of the House going to the Viceroy straight from this House and asking him on behalf of this House to accept the Governor-Generalship. I understand that he meant only that much and not that we should not have Lord Mountbatten as Governor-General.

**Shri Mahavir Tyagi:** What I meant was not to record any objection on behalf of the House to the acceptance of Lord Mountbatten as the Governor-General of India. That thing has already been done and if

[Shri Mahavir Tyagi]

there were any Members in this Honourable House who object to that they could have sent a Resolution to that effect. I do not want to take up that question in this House. What I was suggesting was that you had better drop the idea of going through that item of the programme in which you say, on behalf of this House, Lord Mountbatten was to be invited to accept the Governor-Generalship. I think he has already done it and this formality may better be given up because the House has never discussed this issue, and if without the House having considered this issue, he is invited this will be too formal and in my opinion slightly unfair. What I was suggesting was that without disturbing the scheme or without objecting to his being the Governor-General of India, the House may not be committed. He is the Governor-General. He has also accepted the offer and he remains so without any commitment on behalf of this House.

**Pandit Govind Malaviya :** Sir, I propose that there should be no further discussion on this subject and we should leave it to the President to fix up what he thinks best.

**Mr. Tajamul Hussain** (Bihar : Muslim): May I have your permission Sir, to move a formal Resolution to this effect:

That this House accepts the programme as chalked out by the Honourable the President in connection with the Independence Day Celebration in its entirety?

**Mr. President:** I do not think it is necessary to put any Resolution to vote like this. I think I shall fix the programme as I said, the details of which I shall work out.

**Mr. H. V. Kamath:** Will you be so good as to direct the Members of the Assembly shall not be deprived of the right of introducing at least one visitor each on this historic occasion?

**Mr. President:** It depends upon the accommodation. As I said, we shall do our best to accommodate as many as we can, but if we cannot, we shall devise some means by which all members will be accommodated in an equitable manner.

**An Honourable Member:** May I know, Sir, at what time we should come here?

**Mr. President:** You have to come here on the night of the 14th. I shall announce the exact time later on. It will be at midnight.

**Mr. H. V. Kamath:** About the presentation of the National Flag to every Member, we would be grateful if it could be given before the 15th August.

**Mr. President:** Purchase a flag each.

**Mr. H. V. Kamath:** Presentation by you, Sir!

**Mr. President:** That is a matter which we have to consider. We cannot undertake to provide each member with a flag. It does not seem to be practicable at the present Moment.

**Shri Ajit Prasad Jain** (United Provinces : General): You said you will draw up a scheme according to which visitors shall be equitably admitted to the House. I would like to know the time when we shall be able to know that scheme.

**Mr. President:** We shall work it out in a day or two and we shall announce it in the Press.

**Shri Mahavir Tyagi:** In this regard, may I make one suggestion, Sir. Since you say that several personalities have to be invited, and we are also anxious to have our friends to witness this auspicious ceremony would suggest that instead of holding it here, we may again go to the Old Fort or somewhere else where we can have a big ceremony and a large number of people may be accommodated. Many people in India, who are not in Delhi, many come from outside to witness this occasion. My suggestion therefore is that we may make it a big show and have it somewhere, at some such place where we may have enough accommodation.

**Many Honourable Members:** No. No.

**Mr. President:** As we have been holding our session in this Hall, I think we must have, this function also in this Hall (*Hear, Hear*).

**An Honourable Member:** I propose that for accommodating more visitors these adjoining rooms may also be used.

**Mr. President:** We shall utilise every little bit of space.

There was one thing more which I desired to tell you. We have announced the next session on the night of the 14th and on the morning of the 15th. Notices will be sent out from the office in due course. It is just possible that members may not get notice in time. So they may take this as notice and they may also take whatever is published in the press as notice to them in this regard, and they need not wait for formal notices being delivered to them.

We adjourn now till the 14th.

The Assembly then adjourned till Thursday, the 14th August 1947.