

Tuesday, 29th July, 1947

Volume IV



14-7-1947
to
31-7-1947

CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

REPRINTED BY LOK SABHA SECRETARIAT, NEW DELHI
SIXTH REPRINT 2014

Printed at JAINCO ART INDIA, New Delhi

CONSTITUENT ASSEMBLY OF INDIA

President:

THE HON'BLE DR. RAJENDRA PRASAD.

Vice-Presidents:

DR. H.C. MOOKHERJEE.
SIR V.T. KRISHNAMACHARI.

Constitutional Adviser:

SIR B.N. RAU.

Secretaries:

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

Joint Secretaries:

SHRI R.K. RAMADHYANI, I.C.S.
SHRI S.N. MUKHERJEE.
MR. B.F.H.B. TYABJI, I.C.S.

Deputy Secretary:

SHRI JUGAL KISHORE KHANNA.

Under Secretary:

SHRI K.V. PADMANABHAN.

CONTENTS

Volume IV—14th July to 31st July 1947

| PAGES | PAGES |
|---|---------|
| MONDAY, 14TH JULY 1947— | |
| Presentation of Credentials and signing of the Register | 537—40 |
| Address by President | 541—43 |
| Election changes from Bengal and Punjab | 543—44 |
| Message from the Chairman of the Burma Constituent Assembly | 544—45 |
| Report of the Order of Business Committee | 545—54 |
| Amendment of Rules | 554—55 |
| Election of Members to Committees | 555—57 |
| Election of Vice-Presidents | 557—59 |
| *Appendix | 560—61 |
| TUESDAY, 15TH JULY 1947— | |
| Presentation of Credentials and signing of the Register | 563 |
| Amendment of the Rules | 563—77 |
| Report on the Principles of a Model Provincial Constitution | 577—91 |
| *Appendix | 592—99 |
| WEDNESDAY, 16TH JULY 1947— | |
| Presentation of Credentials and signing of the Register | 601 |
| Election of Vice-Presidents and of Members of Committees | 601—02 |
| Report on the Principles of a Model Provincial Constitution —(contd.) | 602—26 |
| THURSDAY, 17TH JULY 1947— | |
| Report on the principles of a model Provincial Constitution (clauses 9 to 18)—contd. | 627—54 |
| FRIDAY, 18TH JULY 1947— | |
| Presentation of Credentials and signing of the Register | 655 |
| Report on the principles of a model Provincial Constitution (clauses 8 to 22)—contd. | 655—83 |
| *Appendix | 684 |
| MONDAY, 21ST JULY 1947— | |
| Presentation of Credentials and signing of the Register | 685 |
| Condolence over the assassination of Gen. Aung San and his colleagues in Burma | 685 |
| Report on the principles of a model Provincial Constitution—contd. | 686—710 |
| *Report on the principles of the Union Constitution | 710—15 |
| *Appendix A | 716—34 |
| *Appendix B | 735—36 |
| TUESDAY, 22ND JULY 1947— | |
| Presentation of Credentials and signing of the Register | 737 |
| Motion <i>re</i> National Flag | 737—62 |
| WEDNESDAY, 23RD JULY 1947— | |
| Report on the principles of a model Provincial Constitution—contd. | 763—82 |
| Report on the Union Constitution ... | 782—91 |
| THURSDAY, 24TH JULY 1947— | |
| Presentation of Credentials and signing of the Register | 793 |
| Election of members to Steering Committee | 793 |
| Report on the Union Constitution —contd. | 795—821 |
| FRIDAY, 25TH JULY 1947— | |
| Presentation of Credentials and signing of the Register | 823 |
| Amendment of Rules | 823—27 |
| Report of the Union Constitution Committee | 827—53 |
| MONDAY, 28TH JULY 1947— | |
| Presentation of Credentials and signing of the Register | 855 |
| Election of members to the Steering Committee | 855 |
| Report of the Union Constitution Committee | 855—87 |
| TUESDAY, 29TH JULY 1947— | |
| Report of the Union Constitution Committee—contd. | 889—921 |
| WEDNESDAY, 30TH JULY 1947— | |
| Presentation of Credentials and signing of the Register | 923 |
| Duration of August Session | 923—24 |
| Report of the Union Constitution —contd. | 924—52 |
| THURSDAY, 31ST JULY 1947— | |
| Amendments of the Rules | 953—54 |
| Report on the Union Constitution ... | 955—83 |
| Announcements by the President | 983—87 |

CONSTITUENT ASSEMBLY OF INDIA

Tuesday, the 29th July 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

REPORT OF THE UNION CONSTITUTION COMMITTEE

CLAUSE 18

Mr. President: We were dealing with Clause 18 yesterday. Some amendments were moved and some other amendments were not moved. There is one amendment by Mr. Ananthasayanam Ayyangar. Will you take that up now?

Mr. H. V. Kamath (C. P. Berar: General): Sir, before we take up the day's business, may I say, that after the adoption of the National Flag, the question of our National Anthem—our *Rashtragita*—also has got to be determined. We were pleased, Sir, to appoint, in the exercise of your inherent powers, a Committee in connection with the Flag. May I request you, Sir, to similarly appoint a Committee *ad hoc* to go into this question of our *Rashtragita* so that it may be decided early?

Mr. President: I have had that matter under my consideration but I have not been able to fix that up yet. National Anthem might take a little more time than the Flag did and we should not be in a hurry about it. Therefore I am not in hurry myself. We will take up amendment No. 15 in Supplementary List II. There is an addition to the clause.

Shri M. Ananthasayanam Ayyangar (Madras: General): Shrimati Durgabai has already moved it.

Mr. President: There is an amendment by Sir Alladi. Will you take that up?

Sir Alladi Krishnaswami Ayyar (Madras: General): Sir, I beg to move the following amendment;

“That for clause 18 of Chapter IV, the following be substituted:

‘18. Supreme Court.—There shall be a Supreme Court with the constitution, powers and jurisdiction recommended by the *ad hoc* Committee on the Union Judiciary, subject to the following modifications and conditions:

- (1) (a) A judge of the Supreme Court shall be appointed by the President after consulting the Chief Justice and such other judges of the Supreme Court as also such Judges of the High Courts as may be necessary for the purpose.
- (b) For the second sentence of paragraph 15 of the Committee's report the following shall be substituted:

“Their salary may be provided for by statute.”

- (c) Provision for the removal of Judges of the Supreme Court be made on the following lines:

“A judge of the Supreme Court of India shall not be removed from his office except by the President on an address from both the Houses of Parliament of the Union in the same session for such removal on the ground of proved misbehaviour, or incapacity. Further provision may be made by Federal law for the procedure to be adopted in this behalf.”’”

[Sir Alladi Krishnaswami Ayyar]

I may mention, Sir, that there are certain other amendments by Mr. Santhanam. Some of his amendments overlap but I would like to explain my position with regard to these amendments. If any of his amendment is more comprehensive than my amendment, then I would be glad to withdraw. One thing I want to make quite clear. The object is not to make a comprehensive provision in regard to the Supreme Court. The normal procedure that is adopted in every constitution is to give the main heads of power of the Supreme Court and leave it for Judicature Act to be passed by the Assembly to implement the powers that are conferred under the Constitution. From the very nature of things, you cannot have all the provisions inserted in the Constitution. You may indicate what exactly is the head of jurisdiction in regard to the original jurisdiction. You may indicate what exactly is the basis of the appellate jurisdiction. The reason why more detailed provisions were found a place in the Constitution Act of 1935 is quite obvious because the Constitution then wanted to give only certain restricted powers to the Federal Court. Secondly, the Legislature of India itself was not clothed with plenary powers. Therefore Parliament provided more exhaustively for all those powers to be exercised by the Federal Court than are ordinarily found in a Supreme Court Constitution in other Federations. Therefore under those circumstances, the Committee, as referred to in the existing Government of India Act, has indicated what exactly are the lines of jurisdiction, what exactly are the powers to be exercised both on the original side as a matter of original jurisdiction—and as a matter of appellate jurisdiction and that Committee's report is fairly comprehensive; for example, whether supplementary jurisdiction can be invested in the Supreme Court or not is another point that has been raised. That is again referred to in the Committee's Report. Therefore there is nothing to prevent any supplementary jurisdiction being conferred upon the Supreme Court by the future Union Legislature. That will be competent. The main heads of jurisdiction will be indicated in the Constitution Act. Secondly, supplementary jurisdiction is referred to in the report itself. Then the matters in which it can be taken up by the States are also referred to in the Report. Under those circumstances, I venture to think that this provision is adequate. Then with regard to the removal of judges under the Constitution of 1935, the power was vested in His Majesty in Council and His Majesty would have the advantage of a Judicial body. Therefore that was the basis of the Act of 1935. In cases of misconduct or misbehaviour, His Majesty in Council was clothed with the jurisdiction to initiate any proceedings against a Judge of the Federal Court or against a Judge of the High Courts in India. Under the present Constitution the suggestion that is made in certain quarters that the President of the Union with the advice of some Council or some Panel of Judges should have the power of removal is not, I venture to submit, a proposition which will meet with the acceptance of the House. That will bring the highest judicial dignitary in the land, the Chief Justice or the Chief Justices of the High Courts into the position of a member of the Indian Civil Service. Imagine the President appointing a special Commission of a few judges to enquire into the conduct the Chief Justice of India or the Chief Justice of the Provincial High Court. I should think that is not a position which will commend itself to the House. This particular provision which I have put in namely, that "he shall not be removed from his office except by the President on an address from both the Houses of Parliament of the Union in the same session for such removal on the ground of proved misbehaviour or incapacity", is in line with the provision in the various Acts of the British Commonwealth. In Australia, in Canada, in South Africa, there is a similar provision and similarly from the date of the Act of Settlement In England it is only by resolution of

both the Houses that a judge, could be removed from his office. It does not mean that that power will normally be invoked. The best testimony to such power is that it has never been exercised. It is a wholesome provision intended to be a salutary check on misbehaviour, not intended to be used frequently, and I have no doubt that the future legislatures of India which are invested with this power will act with that wisdom and that sobriety which have characterised the great Houses of Parliament in other jurisdiction. Therefore this provision with regard to proved misbehaviour, they may appoint a Committee of the House; it may be a case of secret session. But ultimately the Resolution will have to be passed by both Houses. And then, he may be removed for misconduct. That is not a happy way of expressing the tenure of a judge. That is why it has been put in the negative—"he shall not be removed etc." Then, further provision may be made by Federal law for the procedure to be adopted in this behalf, *i.e.* you cannot put in all the detailed provisions by which the machinery can be set in motion in this Act. As a matter of fact, even a provision like, "Further provision may be made by Federal law for the procedure to be adopted in this behalf" does not occur in other constitutions, but there is a tendency to over-elaborate the provisions on our side and that is the only justification for my putting in that clause. Having regard to the very detailed provisions in the present Government of India Act which are intended to be adapted in the present constitution, so far as they are consistent with the man tenet of our constitution, namely, that we are providing for a Free India, there is no difficulty in adapting those provisions to the judicial machinery that we are going to erect. Therefore we have got those provision. One of our friends has put forward the provision that a judge's salary cannot be reduced during his tenure of office. That provision occurs in the Government of India Act. Therefore, we need not have a detailed provision. Let us concentrate ourselves on the fundamentals (a) in regard to jurisdiction (b) in regard to removal from office. Other matters may be left to Federal law and also to the present Government of India Act which is intended to be adapted into the provisions of this constitution. That is the reason why I have Put the word "salary". That may include emoluments, leave allowances and so on and so forth, but all that need not find a place in the constitution. On these grounds I would ask the House to accept this amendment, but if any convincing reasons are placed why another amendment is to be adopted, I am not wedded to my amendment, I shall be glad to yield to any other amendment that may be proposed.

Shri K. Santhanam (Madras: General): Sir, I move:

"That for Clause 18, the following be substituted:

'18. Supreme Court.—There shall be a Supreme Court with the constitution, powers and jurisdiction recommended by the *ad hoc* Committee on the Union Judiciary except in the following particulars:

- (a) judge of the Supreme Court shall be appointed by the President after consulting the Chief Justice and such other judges of the Supreme Court as also such judges of the High Courts as may be necessary for the purpose;
- (b) the additional jurisdiction to be vested in the Supreme Court as per para 10 shall be by Federal law;
- (c) the salaries of the Chief Justice and other judges of the Supreme Court shall be fixed by Statute and the salary of no judge shall be diminished during his tenure of office;
- (d) provision for the removal of judges of the Supreme Court shall be made on the following lines:

A judge of the Supreme Court of India shall not be removed from his office except by the President on an address from both the Houses of Parliament of the Union in the same session for such removal on the ground of proved misbehaviour or incapacity'."

[Shri K. Santhanam]

Sir, I beg to point out that my amendment embodies all the clauses moved by Sir Alladi Krishnaswami Ayyar and in addition two further clauses. One is with reference to the jurisdiction. The jurisdiction of the Supreme Court is certainly the most important consideration in coming to a decision about the provisions of the Court. I may divide this jurisdiction into two broad categories, namely, the Federal jurisdiction and the non-Federal jurisdiction. Federal jurisdiction falls into four classes. The first class is original and exclusive jurisdiction which refers to inter-Unit disputes or disputes between Units and the Federation. The second class of jurisdiction which is perhaps novel to the Supreme Court in any constitution and which is not vested today in the Federal Court is that the Supreme Court may have both appellate and in some cases original jurisdiction with reference to fundamental rights. That is a new category which is being introduced by our constitution which says that in the case of fundamental rights, ordinarily, it will have appellate jurisdiction but that in any area where there is no provision or proper court to take consideration of fundamental rights, then the Supreme Court may have even original jurisdiction in the matter of such rights. The third category is the appellate jurisdiction with reference to the interpretation of the Federal Constitution and the fourth category is appellate jurisdiction with reference to Federal laws. All these categories of Federal jurisdiction are common both to Provinces and States and this will be possessed by the Supreme Court. But besides this Federal jurisdiction, the Supreme Court will have two categories of non-Federal jurisdiction and this will be confined to Provinces. One is that there will be an appellate jurisdiction with reference to the interpretation of Provincial constitution. Secondly, there will be an appellate jurisdiction with reference to the interpretation of provincial laws. It is a pity that the Committee of the Union judiciary found that they could not invest the Supreme Court with the same jurisdiction with reference to the States. I am not here to say that this should be done by coercion or any kind of imposition, but I would appeal to the States that it is to their own advantage that they should invest the Supreme Court with jurisdiction regarding their State constitutions and State laws in the same way as the Provinces have done. With reference to their own State Constitution, there may be disputes between the people and the rulers and the judgment of the State High Court may not be considered binding on the people. They may think that the State Court is not sufficiently impartial to interpret the State Constitution and they may say that only the Supreme Court can give a judgment which both the rulers and the subjects will consider impartial.

Secondly, even in the case of ordinary State laws, many of the States' Laws are mere adaptations of the laws of the Provinces. Some of the States have not got the elaborate machinery, have not got the necessary legal departments to frame the laws precisely. They simply adopt the Provincial laws. That being the case, supposing the State Court interprets a State law in one manner and the same law is interpreted by the Supreme Court in a different manner, there will be great confusion. After much expense and great trouble, the Supreme Court which belongs to both the Provinces and the States is being established, and I think it will be extremely unwise if the States take their stand on a mere question of prestige and fail to take full advantage of the Supreme Court.

In Clause 10, it is said:

"It will also, of course, be open to any Indian State Unit to confer by special agreement additional Jurisdiction upon the Supreme Court in respect of such matters as may be specified therein."

While I wish that every Indian State should come into the jurisdiction of the Supreme Court on the same level as the Provinces, I dislike the idea of an Indian State Unit conferring by special agreement additional jurisdiction upon the Supreme Court in respect of certain matters. The vesting of such jurisdiction should be done only by the Federal Legislature. It is only the Federal Legislature which should have the power to amend or alter or in any way modify the jurisdiction of the Supreme Court.

With reference to salary, I quite agree with Sir Alladi that it should not be diminished during the tenure of office. But why not precisely state the clause about the salary here?

I have adopted the same clause for the removal of judges except that I have omitted the clause about further provision which is superfluous.

I think my amendment is more comprehensive and I hope Sir Alladi will accept it.

Sir Alladi Krishnaswami Ayyar: In view of what has been said by Mr. Santhanam. I would like to invite the attention of the House to certain passages in the Report. Paragraph 7 of the Report. says:

“If the Union Legislature is competent to legislate on a certain matter.....”

Mr. President: It would be better if we had all the other amendments for discussion. If you are going to make a speech. It would be better to do so after the amendments have all come before us.

Sir Alladi Krishnaswami Ayyar: I have only a few observations to make arising from what Mr. Santhanam said just now. I am not going to make a speech. I only want to explain my position with reference to certain passages in the Report itself.

Mr. President: It may not be quite in order to allow another speech.

Sir Alladi Krishnaswami Ayyar: I am speaking only about what Mr. Santhanam spoke, I am not going to speak about my own amendment; but as a member of this House I am entitled to speak on the amendment of another member. I shall reserve my speech to a later stage.

Mr. President: I shall have to consider it at that stage.

Yesterday, the Mover of the clause did not make any speech and we agreed that the speeches should be reserved for today. The movers of the amendments also did not make any speeches. Now, this is the time when the mover of the clause and the movers of the amendments may speak and thereafter they will all be open for discussion.

Sir Gopaldaswami Ayyangar, would you like to speak now?

The Honourable Sir N. Gopaldaswami Ayyangar (Madras: General): Sir, I think the Movers of the amendments and the other speakers may make their speeches. If I have anything to say, I will do so at the end.

Shri M. Ananthasayanam Ayyangar: Sir, you will find that Clause 18 refers to the Report of the *ad-hoc* Committee on Supreme Court dealing with the functions of the court, the appointment of the judges, their removal etc. This Report consists of more than 15 to 16 paras every one of which is contested. We have given amendments to the

[Shri M. Ananthasayanam Ayyangar]

suggestions and recommendations of these paragraphs. So all the amendments to this clause, Clause 18, and the *ad hoc* Committee's Report may be moved formally and then a discussion on various points can be had and then they may be put to vote in the order, of preference.

Mr. President: So far as I can see here, there is no other amendment to Clause 18 of which I have notice. There is only one, your own amendment to the Appendix. You may move it now.

Shri M. Ananthasayanam Ayyangar: Clause 18 is incomplete without the appendix; they go together. I am not moving amendment No. 16. I move No. 17. I do not move No. 18 and No. 19 which stands in the name of Shrimati Durgabai and myself will be moved by Shrimati Durgabai.

My amendment is as follows:

“That in Para 9 of the Appendix, state:

- (a) that the appellate jurisdiction of the Privy Council in any legal matter is hereby abolished and vested in the Supreme Court;
- (b) that pending appeals in the Privy Council shall be disposed of by the Supreme Court.”

Sir Alladi Krishnaswami Ayyar: There is another clause in the Report dealing with transitional provisions—Clause 3 which refers to cases pending before the Federal Court. My friend's amendment is to delete that provision. I suggest to him the amendment may be brought under Part XI, Clause 3 which runs in these terms:

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

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

My friend's amendment says that it shall not be there. I myself have given notice of an amendment in regard to this clause. Supposing some decision is come to by the House in regard to the amendment moved by my friend and later on I try to move my amendment in regard to the third proviso it would be out of order. The House would have already arrived some conclusion. Therefore I suggest that any amendment in regard to Part XI, Clause 3 may be taken up along with this the interest of clarity, because there is a special provision that is made in regard to pending causes in Part XI paragraph. Therefore I suggest that if my friend wants to move any amendment in regard to pending causes, it may be moved, separately or, at any rate I have given notice of an amendment in regard to paragraph 3 this morning. That might be taken up along with his.

Shrimati G. Durgabai (Madras: General): Sir, I beg to move amendment No. 19 in Supplementary List II:

“That in para. 14 of Appendix, the following be added:

‘Every judge shall be a citizen of the Union of India.’”

Paragraph 14 lays down the tenure of office and conditions of service of judges. Mr. President, I want that every judge shall be citizen of the Union of India. I have moved clause (a) only: I am not pressing clause (b)

Shri M. Ananthasayanam Ayyangar: Sir, I am not moving my amendment No. 20 on Supplementary List No. II. I will move No. 21:

“That the following be added to the Appendix:

“1 (a) A judge may resign his office by communicating to the President.

(b) A judge may be removed from office on the ground of misbehaviour or of infirmity of mind or body by an address presented in this behalf by both the Houses of the Legislature to the President, provided that a committee consisting of not less than 7 High Court Chief Justices chosen by the President, investigates and reports that the judge on any such ground be removed.

(c) A judge shall cease to hold office on his being adjudged an insolvent’.”

So far as this is concerned my friend Sir Alladi Krishnaswami Ayyar has already spoken. If you would permit me I will speak immediately or I will reserve my right to speak.

Mr. President: There is another amendment in the third list in your name.

Shri M. Ananthasayanam Ayyangar: I will move that also:

“That the following be added to the Appendix of the Report:

‘1. (a) A judge of the Supreme Court may resign his office, by tendering his resignation to the President.

(b) A Judge of the Supreme Court may be removed from office by the President on the ground of misbehaviour or of infirmity of mind or body, if on reference being made to it (Supreme Court) by the President, a special tribunal appointed by him for the purpose, from amongst judges or ex-judges of the High Courts or the Supreme Court report that the judge ought on any such grounds to be removed’.”

Mr. President: All the amendments have been moved and they are now open to discussion.

Shri M. Ananthasayanam Ayyangar: Sir, there is a jumble of amendments, to clause 18 and also the various paragraphs in the Appendix. All of them can be put under five heads: (1) Some of them relate to the authority which is to appoint a Supreme Court judge,(2) the authority that has got the right to remove one or other of them,(3) qualifications for being appointed a Supreme Court Judge,(4) by whom the salary or emoluments have to be fixed, and(5) the jurisdiction that has to be conferred on the Federal Court. These are the five items with respect to which amendments have been tabled.

Now with respect to appointment, I find that there is almost unanimous opinion regarding the power to appoint judges being vested in the President—the President not in his discretion but the President in consultation with his ministers. In addition he can consult the Chief Justice of the Federal Court or the judges of any of the high courts. It may be that he wants to appoint a judge from one of the high courts, in which case he can consult the Chief Justice or the puisne judges of the High Court other than the one whom he wants to appoint. It may not be necessary to consult the judges of all the high courts in the provinces and also in the States. Therefore discretion ought to be given to him to consult such of those judges as may have had the opportunity to know the judge whom he wants to appoint for the Supreme Court. There is almost unanimity of opinion in this matter and there is not much controversy over that.

[Shri M. Ananthasayanam Ayyangar]

As regards the right to remove a Supreme Court Judge there is deep difference of opinion on this matter. One school of thought is headed by Sir Alladi Krishnaswami Ayyar, who has tabled an amendment that by an address presented by both Houses of the Legislature to the President, any judge or the Chief Justice of the Supreme Court may be removed from office. The amendment that I have tabled is that it is open to the President to appoint a tribunal consisting of not less than 7 High Court Chief Justices to investigate into this matter and come to a conclusion that the judge or judges ought to be removed for stated misbehaviour or misconduct or similar reason. The President may then remove him. I have also tabled another amendment that a judge may be removed from office by the President on a report presented to him by a panel of judges appointed for the purpose. The objection of Sir Alladi Krishnaswami Ayyar is based on the reason that the highest authority so far as judicial work is concerned in the Union will be at the mercy of the executive head of the Union. It is true that the President will act on the report presented to him by a panel of judges, but in that manner the President's authority is limited. But Sir Alladi thinks that this power ought not to be vested in the President at all, because it will make the Supreme Court judge sub-ordinate to the President. Therefore he has suggested a remedy, that only when the legislature moves the President in this matter by a unanimous resolution, the judge ought to be removed. I have suggested a middle course and have tabled an amendment that any judge of the Supreme Court may be removed from office on an address presented to the President by both Houses of the Legislature but before the address is presented the President must have appointed a committee of seven judges of high courts to investigate into this matter. If they report that the judge in question has committed any breaches for which he is liable to be removed, on that report both the Houses of legislature may present an address to the President or withhold it. Therefore this is a combination of both remedies. The legislature will have control over the removal of a judge and the Power will not be exclusively given to a President or a Panel of Judges. As both houses of the legislature are constituted their number is nearly 600. You will remember that with respect to the removal of the President an amendment was tabled and accepted that when the lower chamber or either of the Chambers initiates a resolution for the removal of the President by way of impeachment, a committee has to be appointed by the other house and on the committee's report a resolution must be framed. It is in the fitness of things that a small body should go into the matter of the misbehaviour of a Federal Judge and recommend that he be removed. The entire body of the legislature consisting of 600 and odd members may find it difficult to investigate into the matter, themselves. Therefore it is reasonable to suggest that both the Houses must be moved in the matter after a committee of judges has reported that it is a fit case for interference. I am not alone in making this suggestion. The Sapru Committee Report-SIT N. Gopaldaswami Ayyangar was a member of the Committee—has suggested that the President, in accordance with the report of the to be appointed for this purpose, may be empowered to remove any judge of the Supreme Court. If Sir Alladi Krishnaswami Ayyar takes objection to this item in the Sapru Committee Report on the ground that it becomes an absolute power in the hands of the President to accept or reject, I could see no objection to his accepting my amendment in this respect which is a combination of both the judicial and executive authority.

The next item in my amendment relates to the qualifications of judges. It is nothing but a reproduction of the qualifications found prescribed in the Government of India Act. To this, Mrs. Durga Bai has tabled an amendment saying that the Judge should be a citizen of India. It is not necessary to say anything on the subject after with the Mover

has said. It is incumbent on us to see that, as was laid down in the clause relating to the qualifications of the President, a Judge of the Supreme Court, who is the watchdog of democracy, is also a citizen of India. He must be a citizen of a Unit. The third qualification also is reasonable and may be accepted.

The fourth item relates to salary. It ought not to be left to the discretion of the President as to what the salary should be. I have also tabled an amendment on this point, but as Mr. Santhanam has a similar amendment, I am not pressing mine. The salary ought not to be varied by the Legislature as long as a person who has occupied the post continued there. In other cases, the salary may be varied.

The last amendment relates to jurisdiction of the Supreme Court. I am sorry to have to say that the approach Mr. Santhanam made to this question of jurisdiction is not quite correct. It ought to be that the Supreme Court has supreme jurisdiction in all matters, but an exception may be made in favour of the States in respect of non-Federal Laws. In respect of any law of the Constitution, it is the Supreme Court that must lay down the law and it must be binding even on States. With regard to British India, the Supreme Court is the highest court in the land with, original jurisdiction in regard to inter-State matters and with appellate jurisdiction over all provincial High Courts. Our Supreme Court is to supersede and replace the Privy Council which has been exercising a kind of appellate jurisdiction over all matters both civil and criminal. This jurisdiction of Privy Council may be transferred to the Supreme Court with some restriction regarding appellate jurisdiction in regard to criminal cases in States.

One other point I want to mention in this connection. It was said that the States cannot confer jurisdiction on the Supreme Court by agreement. The Government of India Act of 1935 contemplates the accession of certain States on conditions and terms. If, by the terms of the agreement, the States confer jurisdiction on the Supreme Court while joining the Union, the terms and conditions of their agreement will be taken judicial notice of and will be enforceable. Therefore it is not wrong and it would not be improper, nor would it be beyond our jurisdiction; to lay down similar provisions to say that as regards any State acceding to the Federation on terms and conditions, such terms and conditions shall become part and parcel of the jurisdiction of the Supreme Court Act. The Supreme Court, may, without any further Act in this matter, extend the jurisdiction conferred upon it by agreement. There is nothing novel in it. It is already in the 1935 Act and it may be accepted.

Then, as regards the existing appeals to the Privy Council, it is true that in the Transitional Provisions, there is provision later in this draft. But the provision there is that all pending appeals must be disposed of by the Privy Council itself. It means that even, after we attain independence and the new Constitution comes into force, the Privy Council should have jurisdiction over the pending appeals. Sir Alladi Krishnaswami Ayyar suggests that this matter may be left over to the stage of consideration of the Transitional Provisions. I agree to that suggestion. I suggest that all these five points in the amendments may be put to vote together instead of taking each amendment separately regarding appointment, removal, qualifications, fixation of salary and vesting of jurisdiction in the, Supreme Court.

Mr. President: I should like to have the leave of the House for absence for a short time as I have to go to the Aerodrome to receive Mr. Jagjivan Ram who is returning today. (*Cheers.*) I would request Sir V. T. Krishnamachari to take the Chair during my absence. (The President then vacated the Chair, which was taken by the Vice-President, Sir V. T. Krishnamachari, *amidst cheers*).

Shriyut Rohini Kumar Chaudhury. (Assam: General) : Mr. Vice-President, Sir. I would request Honourable Members of the House to take care of their ear-drums when I speak through the microphone. I am a loud-speaker myself and when I speak through the microphone, the sound might become perilous for their ears. With this apology I want to address the House.

I think, Sir, the matter under discussion has been very much complicated by now and I shall endeavour to place before this House what simple minded persons like me have understood from the debate. I take it, Sir, that after we have established the Supreme Court, the Privy Council will disappear, that the jurisdiction which is now being exercised by the Privy Council will be exercised by the Supreme Court but that the same amount of delay with which the Privy Council used to exercise their jurisdiction in civil, criminal and other matters will not attend the administration of justice Supreme Court. It has been said, Sir, that it is easy to go into a Court but it is very difficult to get out of it. That has practically been our experience whenever any case had gone to the Privy Council. In the absence of anything said or done to prevent such delays, I take it that justice will be as delayed as it was in the days of the Privy Council. Sir, instead of asking constitutional or unconstitutional lawyers to advise the House on it, I suggest that some persons in this House who had exercised the powers of a judge of a High Court may devise means by which delays in the administration of justice may be avoided, because it is well known that justice delayed is justice denied.

Sir, the next thing that we understand is that these judges will be appointed by the President in consultation with a panel of judges. The panel of judges will therefore have the first voice in the matter of the selection of the judges of the Supreme Court. It means that inferior judges are going to appoint the Supreme Court judges. The judges of High Courts will give the first suggestion as to whom they want as their Chief Justice of the Supreme Court. That suggestion will come from the judges of the High Court who are certainly inferior to the judges of the Supreme Court, but I think there is nothing wrong in that because when even a Sub-Inspector can investigate into cases against their superior officers, when even ordinary electorates can elect the President, there can be no difficulty about High Court Judges appointing or suggesting the names of the judges of the Supreme Court. As a matter of fact, I cannot suggest any better alternative myself. Therefore I think that will be the right course.

Then, Sir, I believe that the Supreme Court as I understand it—I am only giving my impression from the discussion—will also on occasion, exercise the functions that are now exercised by the Federal Court in constitutional matters. Not only that, they will also advise the Government in certain legal matters. This is a serious proposition so far as I am concerned. I do not understand how, if 'the Supreme Court really advises the Government in certain legal matters, in any future litigation between the Government and the party affected, the judges will be able to exercise their discretion and give their judgment impartially. That is

a point over which I would like to have some elucidation. With these few words, I support the amendment that has been moved.

Sir Alladi Krishnaswami Ayyar: Sir, I want to answer certain points made by Mr. Ananthasayanam Ayyangar and Mr. Santhanam.

In the first place with regard to the vesting of any special or additional jurisdiction in the Supreme Court, it is provided for in the report which is submitted for the acceptance of the House. Clause 7 of the Report runs in these terms:

“If the, Union Legislature is competent to legislate on a certain matter, it is obviously competent to confer judicial power in respect of that matter on a tribunal of its own choice; and if it chooses the Supreme Court for the purpose, the Court will have the jurisdiction so conferred.”

Therefore there is nothing to prevent additional jurisdiction being conferred if you adopt that report. When the constitution is finally framed and settled we will have to provide for the vesting of additional jurisdiction.

Then my friend Mr. Santhanam, made a comment on the fact that paragraph 10 of the Report says that it will also of course be open to any Indian State Unit to confer by special agreement, additional jurisdiction upon Supreme Court. In this paragraph the Committee was dealing with a particular kind of jurisdiction which has to be exercised in respect of Indian States, cases involving the interpretation of a law of the Union and cases involving the interpretation of a law of a Unit other than the State concerned, and the States were not prepared to go further than that. Apart from the court being with a jurisdiction to deal with the constitutional validity of law, it is provided that it will also be open to an Indian State to confer additional jurisdiction by special agreement. That does not derogate from the plenary powers of the legislature. At any rate that is not the intention or the object of the Committee. Two things are necessary. So far as the States are concerned, they must agree to supplemental jurisdiction other than the jurisdiction indicated in paragraph 9. There is of course the other necessary pre-requisite, *viz.*, that the Federal Legislature must be willing to clothe the Supreme Court with the jurisdiction. If that is the intention, there is absolutely no necessity for the amendment. The object is not and cannot be to give independent power to a State, without reference to the legislature, to invest any additional jurisdiction. Therefore, when the constitution is framed, such jurisdiction as may be conferred by the Union Legislature with the consent of the States in matters in which the States are interested, will have to be specially provided for. This is my submission to you, Sir, with regard to the necessity for additional jurisdiction. That is exactly the object of the two clauses of the report.

Now the second point is about the Parliament being invested with the power of removal of judges. Here I would ask you, Sir, to follow the practice in all the Dominion Constitutions. Whereas on the one hand there is an anxiety to increase the importance of the judiciary, I cannot understand the judiciary also being treated on a level with Government servants or by a kind of special tribunal being invested with the power of removal. That is why in the Dominion Constitution the words “proved misbehaviour” are used. While the ultimate power may rest with the two Houses, the clause provides that the charges must be proved. How

[Sir Alladi Krishnaswami Ayyar]

exactly to prove the charges will be provided for in the Federal Law. We need not be more meticulous or more elaborate than people who have tried a similar case in other jurisdictions. I challenged my friend to say whether there is any detailed provision for the removal of judges more than that in any other Constitution in the world. The general principle is laid down in the Constitution and later on the Federal Law will provide for adequate machinery and that is the import of the clause. I would, therefore, ask the House to accept the general principle namely, that the President in consultation with the Supreme Legislature of this country shall have the right. That does not mean that the Supreme Legislature will abuse that power. There is sufficient safeguard in the reference "Proved misbehaviour" and we might make elaborate; and adequate provision for the way in which the guilt can be brought home to the particular judge in any federal law that may be passed, but that is a different matter.

But I do not think that in a Constitution it is necessary to provide detailed machinery as to the impeachment, the charges to be framed against a particular judge. To make a detailed provision for all these would be a novel procedure to be adopted in any Constitution. You will not find it in any Constitution, not even in the German Constitution, which is particularly detailed, not in the Dominion Constitutions and not even the Act of Settlement and the later Acts of British Parliament which refer to the removal of judges. Therefore, I think that the very great regard which you pay for judges must be a reason why you should not provide a machinery consisting of five or four judges to sit in judgment over a Chief Justice of the Supreme Court. Are you really serious about enhancing the dignity of the Chief Justice of India? You are. I have no doubt about it. Then there must be some power of removal vested somewhere and therefore you have vested that power in the Supreme Parliament, but not in an unfettered way. It must be through known, normal, ordinary, traditional methods. It is not in discretion of either House to remove a judge, but the ultimate sovereign power will be vested, in the two Houses of Parliament. That is the import of my amendment, Sir.

Then as to the other points raised—and I would ask you to remember, that you are borrowing, so far as it may be, the provisions of the Government of India Act—the salary cannot be reduced during the term of office as provided for in the Government of India Act of 1935 and I have no doubt that the gentleman to whom you are going to refer the drafts of the constitution will take care to see that this provision finds a place in the new Constitution, and I would ask the Members not to undertake the enactment of a regular Judiciary Act in this Constitution. I am not very particular about my amendment. I leave to the House to accept or reject the matter, but I do hope that unnecessary provisions will not be introduced.

Shrimati G. Durgabai: I moved this amendment, Sir, that every judge shall be a citizen of the Union of India. Of course, I realize, Mr. President that I need hardly say anything on this matter, because I expect that this House will fully realize the importance of this matter and agree with me. My amendment, if accepted, will have this effect that it will remove the alien or the foreigner from the field of selection for the appointment of judges. Of course, I would like to add only one or two words, that only a citizen and a citizen alone who will pledge his loyalty to this Dominion of India will be competent to hold this office and however eminent a man may be and however perfect his legal knowledge may be a foreigner or

an alien can never be competent to hold this post. That will be the effect of my amendment. Mr. President, Sir, we have already provided for this qualification in the case of the Federation and also in the case of the Governor of the Province. If we have provided in these two cases, it is all the more necessary that we should do it in the case of the Supreme Court judges or the judges of the High Court, because the Supreme Court is considered to be the watchdog in a democracy which will guarantee the fundamental rights and other privileges of the citizens of India. That is all I want to say to the House before I commend my amendment for the acceptance of the House.

The Honourable Sir N. Gopalaswami Ayyangar: Sir, I really thought that so important an issue as the constitution and functioning of the Supreme Court of the would be Federation would occupy more time than it has this morning, but I think the main issues have been put before the House in the amendments that have been moved. I agree generally in the propositions which Sir Alladi placed before the House. One general proposition is that in settling the principles of the new Constitution on the basis of which the text of that Constitution is to be drafted we need not go into too much detail either as regards jurisdiction or as regards procedure. What we need to put into these principles is only the main considerations in drafting the text which will come up before the Constituent Assembly later on. Sir, so far as the Constitution of this Court is concerned, the proposals made in the report of the *ad hoc* Committee have, I am glad to find, received general acceptance in this House. There is one point in the Report of the Committee to which I should like to draw attention. It has said that it has dealt with various matters, but that only some of them need go into the Constitution and others would more appropriately go into the Judiciary Act, which the Federal Parliament may pass after it comes into existence. If we remember that fact we perhaps would realize that it is unnecessary to go into too much detail at the present moment.

I will only deal with one or two of the points that have been raised, I will take the last point first Shrimati Durgabai has suggested that every judge of the Supreme Court shall be a citizen of the Union of India. Nobody will take exception to that statement as a general proposition. But we have to take perhaps the composition of the court as it may be at the inception of the constitution, and the question whether it should go into the constitution in the form that has been proposed in the amendment or in some different form. I suggest it might be left to the draftsmen.

The second point, Sir, that was referred to in the course of the debate is the one relating to the appointment of the Judges of the Supreme Court. The *ad hoc* Committee made certain proposals. The Union Constitution Committee modified them and we have before us proposals for a further slight modification of even the recommendations of the Union Constitution Committee. Now, so far as I can see, Sir Alladi Krishnaswami Ayyar and Mr. Santhanam agree more or less as to the lines on which these appointments should be made. The appointments have to be made by the President of the Federation. Before making these appointments, he has got to take into consultation people who might be considered to be familiar with the qualifications and work of individuals whose claims deserve to be considered in this connection. Sir Alladi Krishnaswami Ayyar has proposed that a Judge of the Supreme Court shall be appointed by the President after consulting the Chief Justice and such other Judges of the Supreme Court as also Judges of the High Courts as may be necessary for the purpose. That is practically also what Mr. Santhanam has suggested in his amendment. One criticism

[Sir Alladi Krishnaswami Ayyangar]

that was offered against this provision was that it does not provide for the appointment of the Chief Justice himself. I trust I have correctly apprehended Mr. Ananthasayanam Ayyangar's criticism on this point. I think, Sir, that, even as the clause stands, a Judge of the Supreme Court might be held to include the Chief Justice of the Supreme Court also. The clause does not say, a puisne Judge of the Supreme Court. As regards the people to be consulted, the people to be consulted are the Chief Justice and such other Judges. An appointment has ordinarily to be settled before a retiring Chief Justice vacates his office. It is not unreasonable, perhaps it would even be very desirable, that the outgoing Chief Justice should be consulted as also his colleagues and other Judges before the appointment of the New Chief Justice is settled. Therefore, Sir, the clause as put by Sir Alladi Krishnaswami Ayyar, to my mind, covers also the procedure for the appointment of the Chief Justice.

Sir, the other important point relates to the removal of the Judges of the Supreme Court. As regards this, there are two alternatives which seem to deserve consideration. But before referring to these two alternatives I wish only to point out that the contingency of removing a Judge of the Supreme Court from his office is perhaps one of the rarest that we can contemplate. I cannot recall any instance, in Great Britain, for instance, where, on an address of both Houses of Parliament, a Judge has been actually removed. I speak subject to correction. Even in constitutions like those of the Dominions where a similar provision exists, I am not personally aware of any instance where that provision has been used. So whatever procedure you prescribe for the removal of Judges for proved misconduct or misbehaviour, that procedure is likely to be used only in the rarest of contingencies and very probably will not be used within my life time or even the life time of those who are much younger in this House than I am. That being so, I wish that the House will consider on their merits the two alternatives that have been proposed.

One is the procedure suggested by Sir Alladi Krishnaswami Ayyar which runs in the following terms:

"A Judge of the Supreme Court of India shall not be removed from his office except by the President on an address from both the Houses of Parliament of the Union in the same session for such removal on the ground of proved misbehaviour or incapacity. Further provision may be made by Federal Law for the procedure to be adopted in this behalf."

Sir Alladi Krishnaswami Ayyar has explained the implications of this particular draft. One aspect of it which appeals to me very much is the way in which it has been put in this negative form. It takes account of the fact that a Judge is not a functionary whose removal we should contemplate with equanimity. What he says is that a Judge shall *not* be removed except according to certain procedure and to that extent I think it is an improvement on the other suggestions which have been made from time to time.

The other alternative which has been placed before the House is that of Mr. Ananthasayanam. Ayyangar. His draft is:

"A Judge of the Supreme Court may be removed from office by the President on the ground of misbehaviour or of infirmity of mind or body, if, on reference

being made to the Supreme Court by the President, a special tribunal appointed by him for the purpose, from amongst judges or *ex-judges* of the High Courts or the Supreme Court, report that the judge ought on any such grounds to be removed.”

This is a very slightly modified version of the recommendation which was made by the Sapru Committee in this regard.

Between the two amendments, there are certain considerations which we should take into account before we decide which of them we will favour. Among these considerations is the one, that it seems odd that, for the purpose of deciding the question as to whether a Judge should be removed from his office, we should invite the two Houses of the legislature, one of them containing something like 500 or 600 members and the other perhaps consisting of about half that number, to pass an address, that is to say, a resolution, giving their verdict as to whether a Judge has misbehaved and, if so, whether he should be removed from his office. It does seem to me, Sir, that that is a procedure before accepting which we shall have to think furiously. I say so for this reason that we have, even in the case of ordinary public servants, travelled far away from the principle of either getting them appointed by popular vote or of getting them removed by popular vote. If you are going to introduce in the case of Judges of the highest Court in the land the principle which you are not prepared to accept even in the case of ordinary public servants, that procedure, Sir, seems to me to stand in need of very heavy justification, if I may put it in those words. The other procedure that has been suggested is that the question of whether a Judge has misbehaved and therefore whether he should be removed should be decided or adjudicated upon by the President on the report of a Tribunal which he will specially appoint for the purpose from amongst the Judges, and *ex-Judges* of either the Supreme Court or the High Courts. That again, Sir, is placing a Judge who is accused of misbehaviour in the dock before a Tribunal some of the members of which might have held positions subordinate to him in the judicial hierarchy of the country. So there is that to be said against that procedure also. But personally I am not prepared to say that either the one or the other is necessarily to be preferred because, whether you adopt the one or the other, it is my expectation that we shall probably never have an occasion for using this procedure for dealing with any individual judge of the Supreme Court. I should leave it to the House to decide between these two alternatives and whatever alternative it chooses, will be put into the text of the Draft Constitution.

As regards the question of additional jurisdiction, the jurisdiction which relates to States which might be conferred on the Supreme Court, the point is sound that while the Indian State has got to cede, or agree to, this jurisdiction by means of an agreement, the actual conferment of this jurisdiction on the Supreme Court has to be by Federal Law. That being so, Sir, what I would suggest for your consideration is that so far as the questions relating to the citizenship of the Judge and to the conferment of additional jurisdiction on him are concerned, the amendments that have been tabled for those purposes might, if the Movers agree, be withdrawn on the assurance that the points mentioned in the course of this Debate would be borne in mind when the text of the Constitution is drafted. You may, Sir, if you agree, put to the House only the clause relating to the appointment of Judges of the Supreme Court and the alternative clauses which have been suggested for providing for the removal of Judges of the Supreme Court. With a decision on those points and the further decision that we generally accept the report of the *ad hoc* Committee, we shall have sufficient authoritative material on which the text could be drafted.

Mr. Vice-President: I propose to place before the House first the amendments regarding the removal clause. The first amendment is Sir Alladi Krishnaswami Ayyar's which appears in Supplementary List III, Para. 7-C.

"A judge of the Supreme Court of India shall not be removed from his office except by the President on an address from both the Houses of Parliament of the Union in the same session for such removal on the ground of personal misbehaviour or incapacity. Further provision may be made by Federal Law for the procedure to be adopted in this behalf."

I place that amendment before the House.

The amendment was adopted.

Mr. Vice-President: There is a further amendment by Mr. Ananthasayanam Ayyangar 21(b). I take it that that amendment is not pressed.

I now put to the House Mr. Ananthasayanam Ayyangar's amendment 21(a) in Supplementary List II which reads as follows:

"1(a) A judge may resign his office by communicating to the President."

The amendment was negatived.

Mr. Vice-President: I now put Mr. Ananthasayanam Ayyangar's amendment 21-1(c) which is as follows:

"A judge shall cease to hold office on his being adjudged an insolvent."

The amendment was negatived.

Mr. Vice-President: I now place before this House Mr. Ananthasayanam Ayyangar's amendment 19(a) which reads as follows:

"Every Judge shall be a citizen of the Union of India."

Shrimati G. Durgabai: Sir, I moved that amendment but in view of the assurance of Sir N. Gopaldaswamy Ayyangar, I do not wish to press my amendment. But it will find its place in the draft.

Mr. Vice-President: Amendment No. 19(a) is sought to be withdrawn. Does the House permit the withdrawal?

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

Mr. Vice-President: I now place before the House Mr. Santhanam's amendment 8(c) in Supplementary List III:

"(c) the salaries of the Chief Justice and other judges of the Supreme Court shall be fixed by Statute and the salary of no judge shall be diminished during his tenure of office;"

The amendment was negatived.

Mr. Vice-President: I now place before the House amendment No. 17 in List II:

"That in para. 9 of the Appendix state:

'(a) that the appellate jurisdiction of the Privy Council in any legal matter is hereby abolished and vested in the Supreme Court;

(b) that pending appeals in the Privy Council shall be disposed of by the Supreme Court'."

Sri M. Ananthasayanam Ayyangar: Sir, I suggested that I will move it later.

Mr. Vice-President: All right, the amendment will stand over.

Now, Mr. Santhanam's amendment No. 8(b).

Shri K. Santhanam : I do not press the amendment, Sir.

Mr. Vice-President: Does the House permit the amendment to be withdrawn?

Honourable Members: Yes.

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

Mr. Vice-President: I now put the clause, as amended, to vote.

The Honourable Sir N. Gopalaswami Ayyangar: May I point out that the amendment proposed regarding the appointment of the judges has not yet been put.

Mr. Vice-President: There are no amendments. I think all the proposals are the same. They conform to the paragraph in the memorandum, and there is no substantial difference.

I now put Clause 18, as amended, to vote.

Clause 18, as amended, was adopted.

Shrimati G. Durgabai: Mr. Vice-President, yesterday I moved an amendment that Clause 18A be added to Clause 18. It appears in the Supplementary List as amendment No. 15. It reads:

"18A. New High Courts may be established in any newly created province on an address being presented by the legislature of that Province to the Governor and on the same being approved by the President."

Mr. Vice-President: Does any member wish to speak on this proposed Clause 18A?

Shrimati G. Durgabai: I wish to say a few words in support of my amendment. Sir, in the draft I found no such provision made, as is contained in my amendment. So I thought it would be necessary, because by virtue of the power we have given to the Federal Legislature we find that some new Units will be springing up hereafter, and not only that, it will become more necessary, because already there are two newly carved out units, West Bengal and East Punjab. Therefore some kind of procedure must be laid down for the establishment of High Courts in these newly created units. That is why I have suggested the addition of this Clause 18A.

Sir Alladi Krishnaswami Ayyar: I do not see any necessity for such a provision, because if there is to be a province then the judiciary, legislature are all complementary and that will be part of the provincial constitution and the organisation of the province. Therefore there is no need for saying that there must be a High Court. You cannot conceive of a Province normally without a separate judicature and separate legislature. There need not be any special resolution of the legislature. It may well be part of the provincial constitution that there shall be a High Court in each province. Therefore, subject to any drafting and other changes that might be made in principle what Shrimati Durgabai says might be accepted, but there is no necessity for making this provision. We have had common High Courts working, but in the new dispensation there may be no necessity for that. I am told with regard to Assam and Orissa there may be necessity. Ultimately when the constitution is settled this will be subject to the provision that may be made in the provinces. Subject to that understanding, I have no objection to this clause being passed.

Sri M. Ananthasayanam Ayyangar: Such a provision is necessary in the Constitution. So far as the appointment of High Court Judges is concerned, in the provincial constitution that we have passed, there is a provision that the judges should be appointed by the President in consultation with the Chief Justice of India, the Chief Justice of the province and other Chief Justices also. Now, when even the question of the appointment of the judges is within the power of the Federation and the Union President, no authority is specified for establishing a High Court in a newly established Province. I ask, who is the authority to establish a High Court. That is not provided for at all. Is it to be left entirely to the Province without the concurrence of the Centre? Under the present Constitution, the Government of India Act recognises a number of High Courts established in some provinces, but as regards new ones it says that they may be established by His majesty—read Section 219, of the Government of India Act. Therefore, we must decide here and now what the authority is going to be which will in future establish new High Courts. Shall we say, as was said by Sir Alladi, that the entire matter will be left to the Provinces? Then the establishment of a High Court in a province will be entirely within the jurisdiction of that legislature whereas the appointment of the judges, as if that is more important than the establishment of the High Court, is to be regulated by the President of the Union. This seems to be inverting the procedure. Under these circumstances, I respectfully submit that my Honourable friend Mrs. Durgabai has rightly pointed out that power ought to be vested with the President to approve or reject any address presented by the Provincial Legislature, in the matter of establishing a new High Court.

Shrimati G. Durgabai: Mr. Vice-President, Sir, with your permission I would like to add a few more words to this amendment:

“That new High Courts may be established in the already existing provinces of Orissa and Assam and also in the newly created provinces.”

The rest remain as they are.

I commend this amendment for the acceptance of the House.

Dr. P. S. Deshmukh (C.P. & Berar : General): Sir with due respect I also beg to differ from the view expressed by Sir Alladi on this matter. As the previous speaker has pointed out, we should lay down the procedure for the establishment of new High Courts in the Provinces. As we all know, the process of establishing High Courts is a fairly long-drawn out one and it cannot be left to the Provinces to decide to have High Courts on their own initiative and on their own decisions. There ought to be some authority and the right authority would be the Federal Parliament and the President to decide whether particular unit is large enough or is competent enough, or whether there is sufficient necessity for an independent High Court. The establishing of a High Court is not an ordinary matter, and the lack of adequate provision or procedure in the Constitution would be a very great deficiency, indeed. I am very glad, Sir, that the lady Member has pointed out this deficiency and I hope the amendment proposed will be accepted.

Shri Raj Krushna Bose (Orissa : General): Sir, with due respect to the Mover of the amendment I think, this is a question which has not been taken up or considered by the Steering Committee and as the amendment affects the powers of the provinces in regard to the establishment of High Courts and as it is proposed that these powers are to be restricted by the Centre, one does not know what the effect of the amendment will be so far as the powers of the provinces are concerned in this matter. The

names of certain provinces were mentioned, Orissa being one of them. I know, Sir, a few years ago a committee was appointed in that province for the creation of a High Court and that committee submitted a report. It has not yet been considered by the Legislature and no decision has been arrived at. I think the amendment is of such an important nature that it should go to the Steering Committee and proper thought bestowed on it, before the House takes it up for final consideration. I would, therefore, request the Mover to agree that the matter may be referred to the Steering Committee so that we may have their views before we finally decide about it.

Mr. M. S. Aney (Deccan States) : Sir, this amendment refers to the establishment of provincial High Courts and so should not come under this Chapter which relates to Federal Judicature.

The Honourable Sir N. Gopaldaswami Ayyangar: Sir, I entirely agree with the point mentioned by Mr. Aney. I do not think that the clause proposed will come appropriately within the orbit of this Chapter which is entitled 'Federal Judicature'. What is proposed is the establishment of High Courts in newly created provinces. I take it, Sir, that, when you see the text of the new Constitution, you will probably find a provision which will say either that there shall be a High Court in every province just as there shall be a Supreme Court for the Federation: or if it wishes to make a distinction between Provinces which can afford to have a High Court and Provinces which cannot, then perhaps it will name the Provinces where High Courts exist and will take power for the establishment of new High Courts separately in the Provinces where they do not exist. What I wish to point out is that a matter of this description will not be lost sight of in framing the final text of the provincial portion of the Constitution. So far as this Chapter is concerned, I think this amendment is altogether out of order.

Shri M. Ananthasayanam Ayyangar: Sir, I am a member of the Steering Committee and I know that many amendments which have been moved here have not been before that Committee. I know the scope of the Steering Committee. It has not considered clause by clause this Draft Constitution or the Provincial Constitution. There are other consultative committees; there is the Provincial Constitution Committee, there is the Union Constitution Committee and so on. It is not the business of the Steering Committee to consider this amendment and I see no point in the objection that this should first go before the Steering Committee. If it actually comes up there, we will say it is none of our business.

As regards the point of order raised by Sir N. Gopaldaswami Ayyangar, that the amendment does not come under this particular Chapter, I would say the new Clause 18 (a) of the Lady Member wants the President to establish a High Court on an address being presented by the Legislature. If this is to be relegated entirely to the Provincial Constitution and if we do not make a provision here that the President in Council with the aid of his Ministers should be the final authority, then there will be a lacuna. There will be provision only on one side in the provincial constitution, there will not be a corresponding provision in the federal side of the Constitution Act. Whether it fits in as 18 (a) or whether it comes in the earlier or later portion of the Bill does not matter; but provision has to be made in this Constitution and similar provision has also to be made in a detailed manner in the provincial constitution.

Mr. Vice-President: I understand Sir N. Gopaldaswami Ayyangar's assurance to mean that provision will be made for this in whatever parts of the Constitution such provision may be found necessary, by the draftsmen. Does the Mover press the amendment in view of that assurance?

Shrimati G. Durgabai: On that assurance, I withdraw my amendment. The amendment was, by leave of the Assembly, withdrawn.

CLAUSE 19

Mr. Vice-President: Now, we go to Clause 19.

The Honourable Sir N. Gopaldaswami Ayyangar: Clause 19 is in the following terms:

"There shall be an Auditor-General of the Federation who shall be appointed by the President and shall only be removed from office in like manner and on the like grounds as a judge of the Supreme Court."

The principle underlying this clause is that, if the Auditor-General is to carry out his functions efficiently, he has to be an officer who feels that he is independent of the favour of the executive government whose accounts he has to audit, and that is why his status and position are placed on the same footing as those of the judges of the Supreme Court. This, I think Sir, is a very necessary clause in the Constitution.

Mr. Vice-President: There is only one amendment to Clause 19 by Shri Mohanlal Saksena (item No. 18 of Supplementary List No. 1).

(The amendment was not moved.)

Mr. Vice-President: Does any member wish to speak on the original Clause 19?

The question is:

"That Clause 19 be adopted."

Clause 19 was adopted.

CLAUSE 20

The Honourable Sir N. Gopaldaswami Ayyangar: Sir, I move that Clause 20 be adopted. The clause is as follows:

"The duties and powers of the Auditor-General shall follow the line of the corresponding provisions in the Act of 1935."

(Amendment No. 337 of List No. 2 was not moved.)

Clause 20 was adopted.

CLAUSE 21

The Honourable Sir N. Gopaldaswami Ayyangar: I move that Clause 21 be adopted. It is in the following terms:

"There shall be a Public Service Commission for the Federation whose composition and functions shall follow the lines of the corresponding provisions in the Act of 1935, except that the appointment of the Chairman and the members of the Commission shall be made by the President on the advice of his ministers."

Mr. Vice-President: There is an amendment in the name of Mr. H. V. Pataskar.

Mr. H. V. Pataskar (Bombay : General) : Sir, I move:

"That in Clause 21, for the words 'his ministers' the words 'his Council of Ministers' be substituted."

I understand that there is another amendment next to mine—No. 339—which wants the deletion of all these words. If that amendment is passed, naturally my amendment will fall through. But if the words are to be retained, then the words should be ‘Council of Ministers’ and not ‘ministers’ for the simple reason that in Clause 10 which we have already passed what we have provided for is a ‘Council of Ministers’. What I have proposed is only a verbal amendment and it is dependent on the fate of the subsequent amendment—No. 339.

(Amendment Nos. 339 and 340 were not moved.)

Shri V. I. Muniswami Pillai (Madras: General): As these matters are being considered by the Minorities Sub-Committee I do not propose to move my amendment (No. 341).

(Amendment No. 342 was not moved.)

The Honourable Sir N. Gopaldaswami Ayyangar: Sir, the only amendment that has been moved is that of Mr. Pataskar. He wants that for the words ‘his ministers’ the words ‘his Council of Ministers’ should be substituted. If Mr. Shibbanlal Saksena had moved his amendment—No. 339—I should have accepted it because really the words ‘on the advice of his ministers’ are absolutely unnecessary. If an appointment has to be made by the President he is not under the principles of the Union Constitution at liberty to make appointments without the advice of his ministers. But the words being there, and no amendment having been moved for the deletion of those words, I do not think it is necessary for me to agree to the substitution of the words, ‘Council of Ministers’ for ‘ministers’.

Sir Alladi Krishnaswami Ayyar: I should like to move the amendment standing in the name of Mr. Shibbanlal Saksena as it will introduce an element of uniformity. Whenever the word ‘President’ is used what is understood is the President in consultation with the Cabinet. As such, suddenly if in a particular clause we mention about the ministers that might give rise to a difficulty. Therefore, for the purpose of clarity and uniformity it is as well that the words ‘on the advice of his ministers’ are omitted.

Mr. Vice-President: I do not think Mr. Saksena meant his amendment in that sense; he probably meant it in a completely different sense.

(By this time Mr. Shibbanlal Saksena was present in the House.)

Prof. Shibbanlal Saksena (U.P.: General): Sir, I beg to move my amendment No. 339 which runs as follows:

“That in Clause 21, the following words be deleted:

‘on the advice of his ministers.’”

These words are unnecessary as the President has not been given any power to act in his discretion and will always act on the advice of his ministers. These words may, therefore, be deleted.

Sir Alladi Krishnaswami Ayyar: I second the amendment.

The Honourable Sir N. Gopaldaswami Ayyangar: Now that the amendment has been moved, I accept it.

Mr. H. V. Pataskar: In view of the fact that amendment No. 339 has been moved I would like to withdraw my amendment.

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

Mr. Vice-President: The question is:

“That in Clause 21, the following words be deleted:

‘on the advice of his ministers.’”

The motion was adopted.

CLAUSE 22

The Honourable Sir. N. Gopaldaswami Ayyangar: I move Clause 22, viz.:

“22. Provision should be made for the creation of All-India Services whose recruitment and conditions of service will be regulated by Federal law.”

As the House is aware, we have had All-India Services for quite a long time. They have been under the control of the Secretary of State. This control will be terminated from the 15th August. The question arises whether, in conformity with the principle of provincial autonomy, it is desirable that you should continue in being a Service recruited on an All-India basis, but under the control which will be prescribed by Federal law.

Some of you perhaps are aware of the steps which have been taken by the Home Department of the Government of India for the purpose of ascertaining the wishes of Provincial Ministers as regards the desirability of establishing an All-India Administrative Service. There was general unanimity and steps have been taken to establish such a service. This particular clause only attempts to translate the executive action that has been taken into something which will have the authority of law in the future. What it prescribes is that the Constitution should make provision for the creation of All-India Services wherever such a course may be considered necessary. All-India Services will be desirable, I take it, in cases where you wish to attract to the highest services the best material that may be available in the country, and you will have to transgress provincial boundaries for the purpose of attracting this material if you want such material to take service whether under the Provincial Governments or under the Federal Government. A question will arise whether this is in conflict with provincial autonomy, whether it is not the proper thing for you to leave the whole thing in the hands of Provincial Ministers. All that I can say at the present moment is that those responsible Ministers who are in charge of provincial administrations have felt the need already for recruitment on an All-India basis and it will be only the part of wisdom to make provision for such an arrangement in the new Constitution also.

Mr. Vice-President: There is an amendment by Mr. Santhanam.

Shri K. Santhanam: I am not moving it, Sir.

Mr. Vice-President: As there are no other amendments to this clause, I will put Clause 22 to the vote.

The question is:

That, Clause 22 be adopted.

Clause 22 was adopted.

CLAUSE 22A

Mr. Vice-President: There is notice of a new Clause 22A. I call upon Mr. Ananthasayanam Ayyangar to move it.

Sri M. Ananthasayanam Ayyangar: Sir, I move:

“That after Clause 22, the following new clause be inserted:

'22A. Provision shall be made in the Constitution for granting commissions in the Army, Navy and Air Forces and for appointment to other defence services, conditions of service and control of the services.

A military or defence services commission may be set up on the lines of the public services commission for civil appointments.'”

Sir, we just moved and passed Chapter VI relating to Services. Clause 21 makes provision for bringing into existence a Public Services Commission on the lines of the one laid down in the Government of India Act of 1935. In section 266 of the Government of India Act Provision is made to, confer on the Public Services Commission the right to recruit only to civil services. Sub-section (a) reads as follows:

“On all matters relating to recruitment to civil services and to the civil forces.”

Therefore Clauses 21 and 22 relate only to civil forces and no provision has been made in Chapter VI for recruitment to defence services. There is provision in Part X of the Government of India Act, 1935 for the recruitment of defence service. Whether deliberately or by inadvertence this particular provision has not been incorporated in the Draft Constitution. The first part of that Chapter relates to recruitment of defence services and the second part relates to recruitment of civil services for which a Public Service Commission has been appointed. But in our Draft Constitution, Chapter VI relates only to recruitment to civil services, the earlier portion in the Chapter in the Government of India Act which relates to the defence services has been left out. Under the present Constitution, recruitment to Commissioned ranks and grant of King's Commission or the Viceroy's Commission are regulated by Orders in Council of His Majesty. Then there is recruitment to the ordinary defence services. Now what is to take the place of His Majesty's Orders in Council? The Defence services form a very important portion of our services. The gazetted posts and also the civilian posts in the defence services are very important and responsible posts. Shall we leave the recruitment to these posts to the Heads of Departments or the Commander-in-Chief or his lieutenants to fill them up as they like? No doubt rules will be framed regulating the grant of these commissions. But are we not to have an independent body like the Public Service Commission for the recruitment of officers perhaps recommending the grant of King's Commissions?

Sir, hitherto the powers-that-be had classed some people of India as martial and some as non-martial. That view held the field for a long time. But the non-martial races who were recruited during the last war have proved to the hilt that they were equal to the so-called martial races. However, if this power is left in the hands of the powers-that-be for the time being and no independent authority like the Public Service Commission is established for recruitment to defence services, there will be scope for provincialism and some sections of the population might be given encouragement to join the army and not the others. If there is need for having an independent body like the Public Service Commission for recruitment to the civil services and to hold the balance evenly between the Provinces, a *fortiori*, there is greater reason to have something like a Defence Service Commission. That is the amendment I have tabled. I should like to know why it has been omitted and why no provision has been made for recruitment to defence services in the Constitution.

When we copy Chapter X of the Government of India Act, it is necessary that we should copy it in whole. Defence services recruitment

[Sri M. Ananthasayanam Ayyangar]
is an important matter and I do not like it to be left to the Federal Legislature, however good it may be. May be one particular party is in power. My point is, let not one section be given preference to the detriment of another section. Sir, I commend this resolution to the acceptance of the House that a Defence Services Commission ought to be appointed on the lines of the Public Services Commission.

Mr. Vice-President: Any other member who desires to speak on this amendment?

The Honourable Mr. Jaipal Singh (Bihar: General): Mr. Vice-President, Sir, I have great pleasure in supporting the amendment that has just been moved. If you look at Chapter I, Part IV, para, 7, you will find that we have already approved of the President having the supreme command of the Defence Forces of the Federation. Of course, when you have used the expression 'supreme command' I take it that you mean that the President will devise ways and means for recruitment to the Forces under him. Now the amendment seeks to clarify and make the position quite clear as to how officers for the Defence Forces shall be appointed. At the present moment, Mr. President, as you are aware, there are Services Selection Boards, several in the number, throughout the country, and I myself have worked on one of these Boards during the last three years. I know that the present system, the psychiatric system as it is called is the right method. It obviates patronage and cuts right across society. Under this system, everyone has an even chance of getting a commission. The Mover of this amendment has already pointed out that in the future army of India, commissions should be given on the same sort of footing as the superior appointments of the All-India Services, and to my mind, it is imperative that we should have some equivalent of the Services Selection Board. It does not matter whether we call it a Defence Services Commissioner a Services Selection Board but, I have no doubt in my mind that there should be such a body.

Mr. Raghu Raj Singh (Eastern States): Mr. Vice-President, I would like to say a few words on the amendment that has been moved. Recruitment to the Defence Services is a highly technical matter. It should be part of the Defence organisation, and if a Defence Services Commission is set up, it would fetter the hands of the Defence Organisation Committee as I know, no distinction was made even in the past regarding martial and non-martial classes in respect of recruitment to the officers classes. The distinction was made only in regard to the ranks. During the war, a special Directorate was set up to undertake recruitment to the Services and it has developed its own technique. I think this is a matter which you should leave to the discretion of the Defence Department. If you set up a Defence Services Commission, it would fetter the discretion of the Defence organisation.

Prof. N C. Ranga (Madras: General): Mr. Vice-President, Sir, I am very much opposed to leaving such an important matter to the mere whims of the Defence Organisation. For a long time now, there has been a movement in England and many other countries on the continent that the recruitment to the Defence forces should be democratised, so that people from all ranks would be recruited to the defence forces. It has been a notorious fact that officers recruited from particular groups have

not been able to give satisfaction. During the war, the recent one as well as the last one, the triumph of the allies was largely due to the officers recruited from the rank and file. If you want to give a chance to the people at large to throw up their own leadership and assure themselves that their leadership will have a chance of being recruited to the various officer cadres in the defence forces. It is most essential that a Commission should be set up as suggested by my friend, Mr. Ananthasayanam Ayyangar. It may be said by some, "Why don't you leave it to the Federal Parliament?" "Sir, if you have thought it fit to make special provision in this Constitution for a Public Service Commission for the recruitment of a large number of Government officials for the civil services, then certainly it stands to reason that you should make a similar provision for the recruitment of officers to the defence forces. The number of people you are going to recruit for the civil services is not going to be as many as those you will have to recruit for the defence forces. These are times when our defence forces have got to compete with the defence forces of other countries. There is one country as you all know, Soviet Russia, just on the other side of our border. Let us study carefully how the Soviet armies are being constructed, built up and strengthened, and how their officers are being recruited. Their officers are recruited from every community, caste or cadre or society, from every service of social life. If our defence forces are to compete with the defence forces of that country and are to acquit themselves favourably in comparison with the defence forces of that country, then it is most essential that every possible care should be taken to see that competent people capable of providing leadership in times of war are recruited in an impartial manner by a commission like the one that has been suggested by Mr. Ananthasayanam Ayyangar.

The Honourable Sir N. Gopalaswami Ayyangar: Sir, it is true that the draft before the House makes no mention of the defence services. One reason which I can put forward for this omission is that what you find in Chapter I of Part X of the present Government of India Act of 1935 is hardly matter which can be put into the outlines of the Union Constitution which we are considering at the present moment. That particular chapter in the Government of India Act of 1935 concerns itself mainly with questions like the pay of the Commander-in-Chief, the control of His Majesty over defence appointments, the control of the Secretary of State, rights of appeal to the Secretary of State and so on. Most of these will become obsolete when we frame our new Constitution. That is perhaps one of the reasons why it was considered unnecessary to make any special Provision for the defence services in the document that we are now considering. The other point which was raised by the Mover is that we should in the case of the defence services create a body on the lines of a Public Services Commission, in order to deal with the many matters connected with the recruitment and conditions of service relating to the defence services. So far as I am concerned, I do not consider that there is any particular virtue in putting into the law of the Constitution provisions relating to the creation of our Public Services Commission even in the case of the civil services. I do not see why a commission of that sort should not be created by Federal law. After all, what is a Public Services Commission? It makes arrangements for recruitment it gives advice as to the personnel to be selected for appointments, it gives advice as to cases of appeal from punishment and as to the rules to be made for recruitment, conditions of service and so on. It is true that for applying those rules we create a body whose personnel is of the same independent status as that of High Court Judges in order that those rules might be observed impartially. We have made a fetish of having Public Services Commissions provided for by the Constitution Act in the case of the civil services. Any similar arrangements that may be necessary in regard to the defence services can be provided by Federal law; I cannot on the merits see any

[The Honourable Sir N. Gopaldaswami Ayyangar]

real solid objection to it. Now I would mention a further point. There is a very essential distinction between the generality of civil services and the defence services. The defence services are essentially services of discipline and even, in the civil services, I think, it has been recognised that in regard to services which would involve discipline in an intensified form, it is perhaps not so very desirable that the Public Services Commission should be brought in the matter of recruitment or in the decision of disciplinary cases. I would read to you Section 243 of the present Government of India Act which occurs in the Chapter, on the Civil Services, It says:

“Notwithstanding anything in the foregoing provisions of this Chapter, the conditions of service of the subordinate ranks of the various Police Forces in India shall be such as may be determined by or under the Acts relating to those forces respectively.”

What I wish to point out is that some of the matters like the distinction between martial and non-martial classes, questions relating to the representation of communities in the defence services, in the representation of Provinces in the different service—they are all undoubtedly important. But let me point out to the House that the policy relating to those matters is not a matter for decision by any Services Commission which we could set up. Policy is a matter for decision by the Government of the day. So I would suggest that if you want to eliminate injustice and questionable discrimination in regard to these particular points, you have got to tackle the Government of the day and see that they adopt a policy which is reasonable. No doubt there is the question of carrying out the policy, and I think you can by a Federal law set up a body. It may be the present Selection Boards which function in the Armed Forces at present. It may be a different body, but such bodies could be created by or under the provisions of any Federal law which we may enact in the future. So I would say that perhaps we might have a kind of general provision in the Constitution to say that the Federal law shall make due provision for matters relating to the recruitment. Conditions of service etc. of the defence services and leave the rest of it to be worked out later on. I can perhaps give an assurance to the Honourable the Mover that we shall try and insert a general provision of that nature in the Constitution, though it would not be on the same terms as his amendment. If he is satisfied with this, I would request him to withdraw his amendment.

Sri M. Ananthasayanam Ayyangar: It is only a matter of form and the Honourable Sir N. Gopaldaswami Ayyangar is prepared to put the substance of it in some form which he considers suitable. Therefore I am not interested in pressing this before the House. I beg leave of the House to permit me to withdraw it.

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

CLAUSE 23

The Honourable Sir N. Gopaldaswami Ayyangar: I move Clause 23 which reads as follows:

“Subject to the provisions of this Constitution, the Federal Parliament may, from time to time, make provision with respect to all matters relating to or connected with elections to either House of the Federal Legislature including the delimitation of constituencies.”

Mr. Vice-President : There is an amendment to Clause 23 proposed by Mr. Ananthasayanam Ayyangar and Shrimati G. Durgabai.

Sri M. Ananthasayanam Ayyangar: Sir, I move:

“That the following be added at the end of Clause 23:

‘The first elections and subsequent elections shall be held in accordance with the provisions of Schedule (to be attached to the constitution) and the constituencies shall be those set out in another Schedule.’”

I do not press the other sentence:

“The said schedules may at any time be modified or varied by an Act of the Federal Legislature.”

I stop with the first sentence.

The need for this is this. We propose in Clause 23 that election to the Federal Parliament may, from time to time, be regulated by Acts of the Federal legislature, including the delimitation of constituencies. I want to make provision in the constitution itself for the first elections and the first delimitation of the constituencies. We have made a similar provision in the provincial constitution which we passed recently, a week or a fortnight ago. On the same lines, I have tabled this amendment. Therefore, I move this amendment for the acceptance of the House.

The Honourable Sir N. Gopaldaswami Ayyangar: I accept the amendment, Sir, with the omission of the second sentence as agreed to by him.

Mr. Vice-President: I place the amendment before the House.

The amendment was adopted.

Mr. Vice-President: I now place the clause, as amended, before the House.

Clause 23 as amended was adopted.

CLAUSE 24

The Honourable Sir N. Gopaldaswami Ayyangar: Sir, I move Clause 24:

“24. The superintendence, direction and control of all elections, whether Federal or Provincial, held under this constitution including the appointment of election tribunals for decision of doubts and disputes arising out of or in connection with such elections shall be vested in a Commission to be appointed by the President.”

The object of this clause, Sir, is to ensure as far possible that elections in the country, Federal or Provincial, are conducted in an impartial manner. The idea is to set up a Commission appointed by the President under whose auspices all these various aspects of election activities and postelection activities will be regulated and controlled. As the House is aware the abuse of election procedure, of the election machinery and the prevalence of corruption in elections—these are complaints which are widely

[The Honourable Sir N. Gopaldaswami Ayyangar]

made in the country and this clause merely an attempt to bring all these election activities under a common centralised independent control.

Mr. H. V. Pataskar : Sir, I move:

“That in Clause 24 for the words ‘all elections’ the words all ‘Federal elections’ be substituted; and the words ‘whether Federal or Provincial’ be deleted.”

After this amendment, Clause 24 will read as follows:

“24. The superintendence, direction and control of all Federal elections held under this Constitution, including the appointment of election tribunals for decision of doubts and disputes arising out of or in connection with such elections shall be vested in a Commission to be appointed by the President.”

Sir, the underlying idea of this amendment is that so far as elections to the Federal legislature are concerned, the superintendence, direction and control should vest with the President; but so far as provincial elections are concerned, that should be left to the Governor of the Province or to some other appropriate authority in the province itself.

The reasons for this amendment are as follows: Sir, if we look at Chapter VII, Clause 23 relates to Federal elections, elections to the Federal Parliament. Naturally enough, Clause 24 which follows must relate only to elections to the Federal Parliament. It appears somehow the idea must have occurred to those that were responsible for the drafting of these clauses, why not include provincial elections as well in the clause? As I could gather from the speech of the Honourable the Mover, his main argument in favour of subjecting provincial elections to the superintendence, control and direction of the President of the Federation was that that would ensure impartiality of elections. I shall deal with this argument later. But, Sir, apart from anything else this is not the appropriate place where they should make provision for the superintendence of provincial elections. In this chapter we are dealing with and could only deal with Federal elections.

There are again one or two very strong reasons why it should not be so. Uptil now, we find that so far as provincial elections are concerned, their superintendence, direction and control, was in the hands of the provincial Governors. We are going to have a Governor in the province who will be elected on the basis of adult franchise and I do not understand why such a Governor should not be entrusted with this work.

Then, another difficulty is that the President of the Federation will be a person for whom it will be very difficult to either superintend, direct or control elections in far off provinces. That could be done better by those who are in the province itself. The President of the Federation will already have so many duties with him that I do not think it proper that he should be burdened with the liability of superintendence, direction and control of provincial elections.

Then, the only point that was made by the Mover of this clause was that it was only intended for the purpose of having impartial elections. I do not understand how it would make any difference whether the superintendence is with the President of the Federation or with the Governor of the province in this matter. They can be impartial in both the cases if sufficient care is taken. With these remarks, Sir, I commend this amendment for the acceptance of the House.

Shri T. Prakasam (Madras: General): Sir, I would like to support this amendment. The provinces need not be tied down to the Centre in regard to this matter. The provinces have been able to conduct very big elections both in 1937 and in the recent one. The coming elections will be.....

Shri Ram Sahai (Gwalior State): *[Mr. Vice-President, I raise a point of order. Neither all of the amendments have been moved as yet, nor have you allowed members to speak on the original resolution or amendment. Under such circumstance how is it possible for Shri Prakasam, to commence his speech?]*

An Honourable Member: Let all the amendments be moved first.

Mr. Vice-President: I agree that it would be better to allow all the amendments to be moved first.

Amendment No. 345. Mr. Muniswami Pillai and others.

Shri V. I. Muniswami Pillai: Sir, we are going to have elections on adult franchise. I feel it necessary that the representatives of the Schedule Castes and other minority communities ought to be represented in the Tribunal that would be set up but as I understand that the rules will be made later on, for these matters, I do not propose to move this amendment just now.

(Amendment Nos. 346, 347 on List II and No. 20 Suppl. List I were not moved.)

Shri T. Prakasam: Sir, the amendment proposes that the Provinces should be left out from the clause and that is the correct position that should have been taken. I do not know why the Provinces have been brought into this clause. It is quite unnecessary for the Provinces to be tackled on to a Commission that might be appointed by the Centre. The Provinces have been able to carry on their work in every respect without any trouble. Very big elections had been fought out in the past both in 1937 and in recent 1946 elections. Therefore it should not be considered necessary that the Provinces should be brought into this and made to depend upon the Centre's Organisation. The future election, Sir, as we all know, that are going to be fought out on adult franchise would be of very great importance and of very great magnitude. Provinces must be left perfect freedom to carry on this work by themselves as they have been doing hitherto. It is impracticable that the Central organization should be thinking of supervising the work in the Provinces. The Centre has got enough of work in every Department and particularly with regard to this also. Therefore, Sir, there is no need to argue very much on this matter. The Provinces must be excluded as stated in the amendment. Sir, I should like to support this amendment. The Provinces need not be tied down to the Centre in regard to this matter.

The Honourable Dr. B. R. Ambedkar (Bombay : General): Mr. Vice-Chairman. I think it is desirable that I should state to the House the origin of this clause.

*[]*English translation of Hindustani Speech.

[Dr. B. R. Ambedkar]

Although this clause appears in the Constitution which deals with the Union, as a matter of fact this matter was dealt with by the Fundamental Rights Committee. The Fundamental Rights Committee came to the conclusion that no guarantee regarding minorities or regarding elections could be given if the elections were left in the hands of the Executive of the day. Many people felt that if the elections were conducted under the auspices of the Executive authority and if the Executive authority did have power, as it must have, of transferring officers from one area to another with the object of gaining support for a particular candidate who was a favourite with the party in office or with the Government of the day, that will certainly vitiate the free election which we all wanted. It was therefore unanimously resolved by the members of the Fundamental Rights Committee that the greatest safeguard for purity of election, for fairness in election, was to take away the matter from the hands of the Executive authority and to hand it over to some independent authority. Although Clause 23 does not specifically refer to the details of the scheme that was considered in the Fundamental Rights Committee, I should like to state to the House that the Scheme that was in the minds of the members of the Fundamental Rights Committee was that there would be a Central Commission appointed by the President in order to deal with the elections throughout India. Although that was the scheme contemplated that there should be a Central Commission appointed by the President to superintend, direct and control elections, it was never contemplated that there would be only one Commission sitting in Delhi or at some centre where the Central Government was seated. The scheme was that there would be one Central Commission which probably would deal with the elections to the Federal Parliament but that the Commission would have also subordinate to it a Commission in each Province or, if a Province was too small, to have a single commission, for two or three provinces combined together, so that their affairs far as elections were concerned, may be carried on by a Local Commission. From the very beginning the idea was that this thing should be decentralized. There should be one Central Commission for Federal election and there should be several Commissions for the elections conducted in the various Provinces. My submission is this that if that scheme comes into operation, the point which my friend Mr. Pataskar has in mind in moving the amendment would be gained, because so far as I understood from him, what he wanted was that there should be a local authority or a Local Commission which would deal and be concerned with elections in that Province. I think that was our intention although that scheme has not been mentioned in Clause 24. That undoubtedly was the matter we had in mind. However, if my friend Mr. Pataskar still persists in putting his amendment through, I would like to ask him one question which remains a matter of doubt when you read the amendment as drafted by him. He wants to omit the words 'all elections' and substitute the words 'all Federal elections'. I have no very great objection to his amendment provided he satisfies me on one point. I want to ask him whether or not he accepts the principle—and after all what we are concerned with is the principle—what I want to ask him is this does he accept the principle that elections should be placed in the hands of an independent body outside the executive? If he accepts that, personally, as I said, I will have no objection if it is agreed by the House that a similar clause which is contained in Clause 24 be introduced in the Provincial Part of the Constitution. I have no desire for centralization. What we had in mind was that the elections should be taken out of the hands of the Government of the day.

Mr. H. V. Pataskar. Before we proceed further with the discussion, I would like to make it clear as the Mover of this amendment that I entirely agree with my friend Dr. Ambedkar that the superintendence, direction and control of elections should be beyond the scope of any executive authority and should be in charge of some independent authority and provision can be made in that behalf in the Provincial constitution.

Shri K. Santhanam : I think the clause as it stands is too wide. What do we mean by elections? First of all, we have to prepare the electoral rolls. Secondly, at the time of the elections, we have to arrange for polling booths and polling officers. Then comes the taking of ballot papers, counting them and so on. I think especially when we have universal adult suffrage the entire machinery of the Provincial Government will have to be harnessed to carry out these elections. Therefore, unless the final executive authority is in the hands of the Government, no independent Commission can control the entire Provincial Government in all its stages. Certain aspects like election tribunals or consideration of the qualifications of candidates or the objections to nominations can be handed over to an independent body, but elections as a whole cannot be handed over to it, I think if any attempt is made to hand it over either in the case of Central elections or in the case of Provincial elections, to an independent Commission it will not function at all. It will not be capable of managing it, because in these days elections mean that the entire resources both administrative and financial of the Governments concerned have to be utilised. Therefore, when the time comes for drafting, these matters will have to be looked into very closely and the powers, or rather, the functions of the Commissions should be narrowly fixed and limited to those things which should be entrusted to a judicial authority and not to an executive authority. It should be really a judicial commission and not an executive commission. Executive functions should be entrusted to the normal Government of the day while all such matters as have to be disposed of in a judicial manner only should be entrusted to the Election Commission. Otherwise, the whole scheme would be a failure.

Shri Biswanath Das (Orissa : General): Sir, the clause as it is leaves certain powers with Provinces. The superintendence, control and direction of elections are left with the Federal Authority that is to be appointed hereafter under the new Constitution. It would be absurd and impossible for any authority except the Province to think of conducting elections without the co-operation of the Province. I would request Honourable Members of this House to visualise the conditions in which elections are held, including preparation of rolls—the taking of buildings required for the purpose, the posting of polling booths and the like. All this has to be done by the Provincial Government. No Federal authority, however powerful it may be, could take on all these responsibilities. Added to this, Sir, the co-operation of Provincial officials is also necessary. No Federation could undertake these responsibilities. People who are conversant with these elections will readily agree that it is not possible for any Federal authority and much less a Commission to undertake these responsibilities. Under these circumstances, it is necessary that the Provinces should be left in charge of the conduct of elections and it is necessary. I would agreed and go to a certain extent with Dr. Ambedkar in his claim that the control and superintendence of these elections be entrusted to some tribunal or to a Central authority to keep a watchful eye over them. Having had bitter experience of these elections, both in local bodies and in Provincial Assemblies in certain places and in provinces, we know how awful it would be to leave the entire thing to the Provinces

[Shri Biswanath Das]

especially when we are to have the future elections run on party lines. Under these circumstances, it is necessary that a distinct division should be kept in view, namely, that the Provinces should conduct the elections and the Central Authority should have a watchful eye over the superintendence and control of these elections.

A word about the Election Tribunal, Sir, cases have come to our knowledge and it is within our experience that Ministries and Governors of Provinces under the advice of Ministries have not been fair even in instituting proper tribunals in some places. They have been utilised for party purposes to inconvenience opposition parties. It is therefore fair that such tribunals should be appointed independently by this Commission or by a separate and independent authority like the Federal Court, it is thus fair to give the Federation control over the elections, but to say that the elections should be solely and wholly conducted by the Federation is an impossibility, and in fact, beyond the power and scope of any Federation or Tribunal to undertake. Under these circumstances I would appeal to Dr. Ambedkar to agree to the acceptance of a part of his amendment by the Mover himself.

Mr. Satyanarayan Sinha (Bihar: General): I move that the question be now put.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. Deputy President.....

Mr. Vice-President : Closure has been moved.

Mr. Naziruddin Ahmad: Sir, I submit that the principle applicable to a closure motion is that there has been reasonable debate and its acceptance is dependent upon the approval of the House. The House has not been consulted. I shall, however, be extremely brief as I have ever been in this House.

Sir, I rise to support the amendment. Dr. Ambedkar has given an interesting psychology about the history of this provision. He has asked a very legitimate and straightforward question, as to whether a body that is to be set up to decide election disputes would be an independent body, Mr. Pataskar has agreed with him and I also agree with him. But I would ask Dr. Ambedkar and people of his way of thinking whether in a Province a sufficiently independent body is not available. I think the speech of Dr. Ambedkar breeds suspicion about the ability and independence of the Provinces. Are not the judicial tribunals in the Provinces independent, and is not our judiciary to be trusted? I submit that the Provincial authorities are well aware of the local conditions under which elections are held. I beg to submit that High Court Judges or other members of the Judiciary selected by the Provincial authorities may be safely left to deal with this matter. In my opinion, the treatment by the Centre of the Provinces in some respects is rather stepmotherly. There is too much interference, too much of suspicion about the ability of the Provinces. Sir, I support the amendment.

The Honourable Sir N. Gopalaswami Ayyangar: Sir, on the essentials, we are all agreed and I am prepared to accept the amendment which has been moved, that is to say, this clause in the Union Constitution should be limited to Federal elections. I wish to point out to this connection only

one fact, and that is, that the Advisory Committee on Minorities made the following recommendation:

“The superintendence, direction and control of all elections to the legislature whether of the Union or of a Unit including appointment of election tribunal shall be vested in an election commission for the Union or the Unit as the case may be, appointed in all cases in accordance with the law of the Union.”

Now that envisages the appointment of a separate Unit Commission for looking after elections in the Unit, in addition to a Union Commission which will look after Federal elections; and this particular recommendation, I find, was approved by the House when it considered the Model Provincial Constitution. The statement of principle in this paragraph was endorsed by the House.

As regards the point mentioned by Mr. Santhanam, that this might encroach on the legitimate sphere of the executive in the different areas, I need only point out that what this clause provides for is only superintendence, control and direction. The actual conduct of elections, the executive machinery that may be required for conducting them and so on will have to be mobilised through the respective provincial governments. The superintendence or control will come in for instance, in regard to the location of polling stations or the selection of polling officers, methods of voting and the safeguards that have to be provided for any breach of the principle of secrecy in the ballot and so on. It is necessary that matters of this sort are properly and impartially done. Otherwise they may lead to injustice, corruption and so on. Such matters should, therefore, be in the hands of an impartial tribunal of this description. Sir, I accept the amendment.

Mr. Vice-President: Amendment No. 344 proposed by Mr. Pataskar is before the House:

“That in Clause 24 for the words ‘all elections’ the words ‘all Federal elections’ be substituted; and the words ‘whether Federal or Provincial’ be deleted.”

The amendment was adopted.

Mr. Vice-President: Now, I place before the House the Clause 24 as amended.

“The superintendence, direction and control of all Federal elections, held under this Constitution, including the appointment of election tribunals for decision of doubts and disputes arising out of or in connection with such elections shall be vested in a Commission to be appointed by the President.”

Clause 24, as amended, was adopted.

Mr. Vice-President: We shall now adjourn to 10 O’clock tomorrow morning.

The Assembly then adjourned till Ten of the Clock on Wednesday, the 30th July 1947.