

Monday, 28th July, 1947

**Volume IV**



**14-7-1947  
to  
31-7-1947**

# **CONSTITUENT ASSEMBLY DEBATES**

## **OFFICIAL REPORT**

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CONSTITUENT ASSEMBLY OF INDIA

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## CONSTITUENT ASSEMBLY OF INDIA

*Monday, the 28th July 1947*

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

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### PRESENTATION OF CREDENTIALS AND SIGNING OF THE REGISTER

The following Members presented their Credentials and signed their names in the Register:

1. Pandit Chaturbhuj Pathak (Central India States Group).
2. Major Maharaj Kumar Pushpendra Singhji (Central India States Group).
3. Sir Jwala Prasad Srivastava (United Provinces: General).

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### ELECTION OF MEMBERS TO THE STEERING COMMITTEE

**Mr. President:** Members will recollect that there were two Members to be elected to the Steering Committee. I have pleasure in declaring Mr. Ramchandra Manohar Nalavade and Mr. Suresh Chandra Majumdar duly elected as Members of the Steering Committee, they being the only names whose nominations were received for the two vacancies.

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### REPORT OF THE UNION CONSTITUTION COMMITTEE

**Mr President:** We shall now proceed to the consideration of the clauses of the report of the Union Constitution. The held-over clause is Clause 8.

**Mr. H. V. Kamath** (C.P. and Berar: General): Before we proceed to the day's business, I have a little request to make. May I do so? Will you be so good as to direct that our National Flag be presented to every Member of this august Assembly, who will treasure and cherish it as a worthy memento of the historic occasion on which it was adopted unanimously and with acclamation by this House, the occasion on which a great new Free State was born?

**Mr. President:** That is a matter which will require a little consideration and after consulting the Steering Committee, I will make an announcement later.

**Mr. Tajamul Husain** (Bihar: Muslim): May I know Sir, if this session is going to end on the 1st of August? The information is necessary because we have to book our seats previously.

**Mr. President:** I have been considering the matter this morning. We have been going on slowly with the consideration of the clauses. At the rate at which we have been going, I do not know whether we shall be able to finish the consideration of all the clauses before the 31st. I am anxious myself that this Session should end by the 31st so that the Members might go and return again on the 15th of August, when they have to return here and we may have another short session after that for considering the report of the Union Powers Committee and the Advisory Committee and certain other matters. So far as I am at present advised, I think we shall end this Session on the 31st but I am hoping that the Members will bear that in mind and will cut down the discussions as far as possible consistently with efficiency of the discussion and complete the consideration of this Report by the 31st. We have still four days for that purpose.

**Mr. Tajamul Husain:** May I know one thing? Do we understand that this Session will end on the 31st whether the Union Committee Report is finished or not, as we have to book our berths beforehand? It will be better to definitely fix a date whether the work is finished or not.

**Mr. President:** As I have already stated, as at present advised, 31st is going to be the last day of the session.

We held over discussion of two Clauses 7 and 8. Shall we take them up now?

**The Honourable Sir N. Gopaldaswami Ayyangar** (Madras: General): We can now take up Clause 8-A that was moved by Sir Alladi Krishnaswami Ayyar, which was held over for discussion.

**Mr. President:** I think we have passed Clause 8. We shall take up Clause 8-A which was moved by Sir Alladi Krishnaswami Ayyar. I do not know if members have got that before them. I shall read it out:

“That after Clause 8 the following new clause be inserted:

- ‘8-A. (1) The Government of the Federation, may by agreement with any acceding Indian State but subject to the provisions of the Constitution in regard to the relationship between the Indian Federation and an acceding Indian State, undertake any legislative executive or judicial functions in that State.
- (2) Any such agreement entered into with an Indian State not acceding to the Federation shall be subject to and governed by any Act relating to the exercise of foreign jurisdiction by the Parliament of the Federation.
- (3) If any such agreement covers any of the matters included in an agreement between a Province and a State under Clause 8 of the Provincial Constitution, the latter shall stand rescinded and revoked.
- (4) On an agreement as per the provisions of sub-clause (1) being concluded, the Federation may, subject to the terms of the agreement, exercise the legislative, executive or judicial functions specified therein through appropriate authorities.’”

If any member wishes to say anything about this clause, he may do so now.

I will just see if there are any amendments to clause 8-A.

**Mr. B. M. Gupte** (Bombay: General): A verbal amendment Sir:

“That in item No. 5 of Supplementary List I, dated 24-7-47, in sub-clause (3) of the proposed clause 8-A, after the words ‘the latter’ the words ‘to the extent it is covered by the agreement with the Federation’ be inserted.”

**Sir Alladi Krishnaswami Ayyar** (Madras: General): I accept the amendment.

**Mr. President:** Does any one else wish to say anything about it?  
(None rose to speak.)

I will now put the amendment to the amendment to vote. It has been accepted by Sir Alladi.

“That in item No. 5 of Supplementary List I, dated 24-7-47, in sub-clause (3) of the proposed clause 8-A, after the words ‘the latter’ the words ‘to the extent it is covered by the agreement with the Federation’ be inserted.”

The amendment was adopted.

**Mr. President:** I now put the clause as amended.

Clause 8-A, as amended, was adopted.

**Mr. President:** We now go to Clause 10.

#### CLAUSE 10

**The Honourable Pandit Jawaharlal Nehru** (United Provinces: General): This is a very simple clause, Sir:

“10. There shall be a council of ministers with the Prime Minister at the head, to aid and advise the President in the exercise of his functions.”

I beg to move this.

**Mr. President:** There are a number of amendments of which I have got notice. Mr. Pocker Sahib Bahadur.

**Haji Abdul Sathar Haji Ishaq Sait** (Madras: Muslim): He has left and he has authorised me and one or two other members to move his amendments.

**Mr. President:** Mr. Ahmed Ibrahim. Sahib Bahadur.

**Haji Abdul Sathar Haji Ishaq Sait:** Both of them have left. I do not know whether you can permit me to move it.

**Mr. President:** Any other member can move it. You desire to move it?

**Haji Abdul Sathar Haji Ishaq Sait:** I move:

“That for Clause 10 the following be substituted:

‘10. There shall be a Council of Ministers elected by the National Assembly by a system of proportional representation by single transferable vote and the council of ministers shall be responsible to the National Assembly’.”

I do not think, Sir, any elaborate speech is required on this. The amendment is very simple and clear and I hope this will be accepted by the House. I move.

(Amendment Nos. 213 to 217 were not moved.)

**Shri H. V. Pataskar** (Bombay: General): I have given notice of this amendment in order to make it clear that the principle of collective responsibility will be applicable to the council of ministers to be appointed under this clause. As Sir N. Gopalaswami Ayyangar has given notice of another similar amendment in the supplementary list, I do not propose to move this amendment (No. 218).

**Pandit Thakur Das Bhargava** (East Punjab: General): \* [Mr. President, Sir, the amendment which I want to move is this:

“That the following be added at the end of Clause 10 :

“The Prime Minister shall select the other Ministers and the whole ministry shall be responsible to the legislature and act on the principle of joint responsibility in the discharge of the duties of the Ministry’.”

I need not remind members that it has been laid down in the objectives Resolution that a democratic form of Government shall be established in the Indian Union. The question now is whether the democratic government should be of the Ministerial type or of the Presidential type as is the case in the U.S.A. So far as the provincial constitutions are concerned we have accepted the principle that responsible democratic government should be established except as regards a minor point about the powers of the government. The principle to be followed in the Union Government should be that the Prime Minister should be the pivot of the whole administration. He should have full powers, and the President would be merely a constitutional head; and he should be given no individual powers or discretion. Whatever the President will do should be on the advice of his ministers. This is a good principle and for this, the British model is regarded as an example by the whole world. This is a model of executive powers which leads to the good and welfare of the people. After great deliberation and mature consideration the Union Powers Committee did not adopt the Presidential constitution of the U.S.A. For this reason, this amendment is based on the British model, though the House is already committed to it. Even then, it should be clearly stated in the Union Constitution that the voice of the Prime Minister would be the final voice and the President will merely echo it. On no occasion shall the voice of the Premier be flouted. Secondly, the Prime Minister should have the right to choose his cabinet colleagues, and the principle of collective responsibility should be adhered to.

I need not emphasise this any more; I would like to say in the end that these three basic amendments, which are based on democratic principle, may be accepted by the House.]\*

**Mr. H. V. Kamath:** Sir, my amendment is covered by the amendment of Pandit Thakur Das Bhargava. So I do not propose to move my amendment.

**Kazi Syed Karimuddin** (C.P. & Berar: Muslim): Mr. President. Sir, my amendment is:

“That the following be added at the end of Clause 10:

“That the Executive of the Union shall be non-parliamentary, in the Sense that it shall not be removable before the terms of the Legislature and a member of the Cabinet or the Cabinets may be removed at any time on impeachment before a judicial tribunal on the ground of corruption or treason.

The Prime Minister shall be elected by the whole House by single transferable vote. Other Ministers in the Cabinet shall be elected by single non-transferable vote’.”

Sir, there was a discussion at the time of the passing of the recommendations of the Provincial Committee regarding this issue but that decision is not binding when we are considering the Union Constitution

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

My submission is that the parliamentary system which is functioning in India under the 1935 Act has miserably failed as far as the Local Self-Government, Local Boards or Municipalities are concerned. All over India you must have noticed that there have been deadlocks and as the worthy leader of the Muslim League said, it does not suit the genius of the people. As far as the Provincial Assemblies are concerned, there was success to some extent because the Congress was fighting the British Imperialism and all conflicting elements were reconciled on that issue. The Muslim League had an ideal of Pakistan and the majority of Muslim members were elected on the Muslim League ticket but with the disappearance of British Imperialism, with the disappearance of the programme of liberating the Indian people, and with the attainment of Pakistan there will be a plethora of parties and groups. There might be communists, socialists, Muslim Leaguers and many others. To expect such a large majority as we had in the past will be an impossibility. There will be many groups and to expect that there will be a very solid and absolute stability for the Government will be a myth. We have seen in the past that in the working of the Provincial Constitution in the Provinces the Opposition was neglected, ignored and sometimes punished. We have also seen that the parliamentary system which is existing at present created favouritism and nepotism in regard to those people who were supporting the Ministry. The Ministers were serving the members of the party more than the people. A Minister was not a humble servant of the Nation but he was a humble servant of those who were supporting him in the Cabinet and therefore I say that this scheme has not worked well in the past. At a time when India is attaining the cherished goal of independence, what do we find around us—arson, killing and looting. Why, because there is weak executive manned by Ministers who depend for their existence on the support of those people who are interested in communal tension. Everybody is not Pandit Jawaharlal Nehru. Pandit Jawaharlal Nehru when he went to Bihar, announced that people would be bombed if they continued the rioting but there was not a single minister, either Muslim or Hindu in the whole of India who took this attitude. Diamonds are rare, stones are numerous. What we want to-day is a stable Government. What we want today is a patriotic Government. What we want to-day is a strong Government; an impartial and unbending executive, that does not bow before popular whims. To-day there are weak and vacillating executives in all Provinces who are amenable to influence of the members of the Party and it is impossible for them to displease if they want to continue in the seats that they occupy. Now it is said that the parliamentary system of Government is democratic. America is a democratic country and the Constitution that is prevailing there is also democratic. We find that there is a non-parliamentary executive and the whole administration of the country is divided into 3 parts, one is the Judiciary, the other is the Executive and the third is the Legislature. It is impossible, for the Executive to defy the policies laid down by the Legislature and there is the Judiciary to check the excesses of the Executive. Under the circumstances when there is communal tension everywhere, and when there are disruptive forces in this country, there is no other go except to have an Executive which is non-removable by the vote of the legislature. The other day when an amendment was moved at the time of the consideration of the Provincial Constitution, Dr. Pattabhi wanted to explain from a higher plane, although he was speaking under impulse, that the non-parliamentary executive was not suited to the conditions of India. Instead of that he argued about the separate electorates in India. He argued about the Communal Award which was beside the point. There is no communal question in America and in spite of that, this non-parliamentary executive has been adopted there. This is a country of different religions. This is a country of different ideologies. This is a country with different cultures. At a critical moment in the history of India when we do not want internal



[Kazi Syed Karimuddin]

strife, when we want a formidable Government to be a bulwork against all aggression, it is necessary that in the interim period at least there should be a non-removable executive and non-parliamentary executive. The salvation of Indian people lies in this. There will be neither any favouritism nor nepotism and I plead with the House to accept my amendment.

**Mr. D. H. Chandrasekharaiya** (Mysore State): Mr. President, Sir, my amendment is to the effect that "provision should be made to give adequate representation to the States in the Council of Ministers". Beyond suggesting that the point raised in this amendment be kindly kept in view at the time when the Ministry is actually formed, I do not propose to press it.

**Mr. President:** Mr. Gokulbhai Bhatt.

**Shri Gokulbhai D. Bhatt** (Eastern Rajputana States Group) \*[Sir, Clause 10 lays down that there will be a Council of Ministers and a Prime Minister. But it does not state how the Ministers will be selected or approved. Will the Cabinet Ministers be members of the Parliament? What clauses lay down that they will be members of the Parliament? What should be their salary? Can any changes be made in it? There is no mention of this anywhere. I want to emphasise that it would be better to make all this clear here, as we have done in the draft constitution for the provinces. But our constitutional experts and people more conversant with law than myself say that this is a matter regarding the Union, the Centre, and that it is no use dilating on it because when the final draft will be prepared, the matter will be considered and everything will be clear. I think that it is very necessary to mention as to how the Cabinet will be formed. But we have been assured that all this will be in accordance with what has been laid down in the provincial constitution. With this hope and also in view of the opinion and advice that this amendment should not be moved, I do not want to place it before the House.]\*

**The Honourable Sir N. Gopalaswami Ayyangar:** Sir, as the clause now stands in the draft, it does not say anything about the manner in which the Council of Ministers is to be chosen and the responsibility of that Council to the Legislature. A number of amendments have been tabled on this aspect of the matter and in order to cover the essentials in respect of these matters, I have given notice of this amendment, that at the end of Clause 10 the following be added:

"The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister. The Council shall be collectively responsible to the House of the People."

Very few words are required from me to explain the content of this amendment. The Prime Minister is to be invited by the President to form a ministry and naturally by convention the President will invite the leader of the party which by itself or together with the support of other groups in the House is able to command a fairly stable majority. The other ministers will be chosen by the President on the advice of the Prime Minister. Provision is made for collective responsibility to

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\*[ ] English translation of Hindustani Speech.

the Lower House or the House of the People. Generally, the responsibility is only to that House, not to the Parliament as a whole. I notice that in one of the amendments it has been suggested that there should be both joint and several responsibility. I do not think in the case of a Government we need copy the practice which perhaps is common in the framing of ordinary private contracts between a Board of Directors possibly and other people. It is sufficient I think that we provide for the collective responsibility of the Council to the House of the People. Sir, I move.

**Mr. President:** These are the amendments of which I have notice. The clause as also the amendments are now open to discussion.

**Mr. Tajamul Hussain:** Mr. President, Sir, Clause 10 says that there shall be a Council of Ministers with the Prime Minister as the Head to aid and advise the President in the exercise of his functions. Sir, there is no mention in this Clause as to how the Council of Ministers is to be created. Therefore I find, Sir, that an amendment has been moved to the effect that each Minister shall be elected by the Assembly by the principle of proportional representation by single transferable vote and the Council of Ministers shall be responsible to the Assembly. Now, Sir, we can safely divide this amendment into two parts; the first part is that the Ministers are to be elected by the Assembly; the second part is that the Cabinet of Ministers are to be responsible to the Assembly. As regards the second part, I entirely agree. If the Council of Ministers have no majority behind them in the Assembly they will not remain in office or if there is a vote of 'no confidence' against them, even then they will get out. Therefore this part of the amendment I can quite appreciate. But as regards the first part, namely, that the Ministers shall be elected by the Assembly, I am afraid, Sir, I have not been able to appreciate. If the Council of Ministers are to be elected by the members of the Assembly by proportional representation by means of the single transferable vote, then, Sir, what may happen? There may be a small party and if there is single transferable vote by proportional representation, that small party may succeed in electing a Minister. Now, Sir, that party may not have the same political view as the majority party in the Assembly. Therefore in a Cabinet there may be Ministers with two divergent views and opinions. Now, Sir, if that happens there will be no team work in the Ministry and this cannot be called a stable Ministry. After all we have seen that the English system in this connection has been tried for centuries in England and it has worked well. What happens in England? The leader is summoned by the Head of the State, *i.e.* the King and is appointed Chief Minister or Prime Minister. This Chief Minister or Prime Minister has to submit the names of the other Ministers and in consultation with the Prime Minister the Head of the State or the King and appoints all the Ministers. Then, in that case the ministry is stable; for when the Prime Minister has got the majority in the House, he will carry on, and if he has not, he will not. But to have two different kinds of ministers in the same Cabinet, I am afraid, I am not able to appreciate.

Now, Sir, another amendment is to the effect that the Union Executive shall be non-Parliamentary and should be irremovable, and that a member of the Cabinet may be removed at any time on impeachment before a judicial tribunal on the ground of corruption, etc., and that the Prime Minister shall be elected by the whole House by single transferable vote, while the other Ministers shall be elected by single non-transferable vote.

[Mr. Tajamul Hussain]

Now, this amendment too can be safely divided into four parts. The first part is that the Cabinet should be non-parliamentary—should be irremovable. That is a thing which I cannot appreciate—the non-parliamentary complexion of the cabinet. It appears to me rather anti-democratic. If the cabinet does not carry the confidence of the House it must be removed. It cannot remain even for one minute, after it has lost the confidence of the House.

The second part is that the Ministers may be removed by impeachment before a judicial tribunal. I am afraid I am not able to appreciate that point also. If a Minister does not have the confidence of the House, and if there is something against him, he can be removed by bringing up the matter before the Legislature. Why drag him before a judicial tribunal? I do not know how this is going to work in a democratic system, such as the one we are hoping to have for our country.

And the third part is that the Prime Minister should be elected by the whole House by single transferable vote, but the other members of the cabinet are to be elected by single non-transferable vote. I am not able to understand what advantage the Honourable Mover expects under this arrangement. If the whole House elects a person, the man who has the larger majority will be elected. Suppose there is a House of 150 and one party—I will not say the Congress or the League, because there will be no old Congress or old League in Hindustan parties will be on different lines—that one party, say, the Socialists number 100 and the opposition number 50.

**Kazi Syed Karimuddin:** Sir, how does the Honourable Member know that there will be no League or Congress party?

**Mr. Tajamul Hussain:** I am glad I have been asked that question. There should not be any such parties, Sir. The sole object of the Congress was to achieve complete independence, without the interference of a foreign power and it has succeeded. The Congress has achieved its object. The League's object was the partition of the country and have Pakistan and they have got that. Both the parties have achieved their respective objects and they have finished their work. What the Congress wanted, the Congress has achieved and what the League wanted, the League has achieved; now there is no difference at all between the two, we are all in India and are Indians but our rights must be protected.

**Mr. President:** The Honourable Member will please confine himself to the discussion of the point. The future of the Congress and of the League is not before the House for discussion.

**Mr. Tajamul Hussain:** But the Honourable Mover had asked me to explain why I said there would be no League nor Congress Party as of old creeds and I thought I had your permission to explain; but now that I do not have it, I will not say anything more about that. I will only say that there will be no parties on the lines we have known them, because both the Congress and the League have achieved their objects. Both parties will have new creeds in future.

I was saying this. Suppose in a House of 150, one party has 100 members. That party will elect the leader who will be the Prime Minister. Suppose there are two candidates and the successful candidate gets 60 votes and the rest 40 oppose him. He still becomes Prime Minister. But what will happen if the opposition of 40 Members combine with the rest 50 in the House? Then the House will be divided as 90 against 60. The Leader cannot be chosen by the Party which has the largest majority in the House. It is just possible, in that case that the man who ultimately becomes the Prime Minister will be a man of the opposition. That is undemocratic and is against that system of democracy which I admire—the English system of democracy. I think that as far as possible, in order to suit our Indian ways, we should adopt as much of the English constitution as we can.

I oppose the amendment.

Lastly, there is the amendment moved by Sir N. Gopaldaswami Ayyangar—which is also the same as that of Pandit Bhargava—providing for the selection of the ministers and the appointment of the Prime Minister. The Prime Minister, it says, should be appointed by the President who will appoint the other Ministers on the advice of the Prime Minister and the Cabinet shall be responsible to the whole House. That is the system which is prevalent in the House of Commons and I support this amendment. As I said, it has worked very well in England and there is no reason why it should not be equally successful in our country. I support the amendment of Pandit Bhargava also.

**Mr. H. V. Kamath:** Mr. President, Sir, this clause seeks to lay down the basis of our national federal executive. Two amendments have been moved to this clause, amendment No. 212 and amendment No. 221 which, in effect, seek to weaken this national executive. My friend Mr. Kazi and my friend Mr. Hussain praised respectively the American model and the British model. Here Sir, we are not concerned with which model or which type we are going to embody in our constitution, whether it is the British, American, Russian, Turkish or the French or any other for the matter of that. Here, Sir, we are concerned with the principles of a democratic, efficient and dynamic government. After all what is needed today is an efficient and dynamic government which will clear the mess that has been made in this country which will lift this country of ours out of the rut into which it has fallen. The most elementary as well as the most fundamental principle, to my mind, of a democratic, efficient and dynamic government is that while every shade of political opinion and every school of thought should be adequately represented in every legislature,—because in a legislature two heads are better than one, twenty heads are better than two and two hundred heads are better than twenty—, in the case of the executive, specially when we are planning a dynamic executive, the reverse is the case. Here, Sir, in an executive it should be that twenty heads are better than two hundred, two heads are better than twenty and in an emergency even one head is better than two. In an emergency where prompt action and quick decision is needed, dynamism is required one head is better than two heads. But these amendments seeks to lay down a basis for the executive which if accepted would weaken the executive and would practically render it passive, unstable and static and render it unable to cope with the tasks that lie ahead of us. After all a cabinet or an executive is not a *Shivaji ka Barat* or an assorted museum piece or a mere *Khitchri*, but we want to make the executive a really dynamic executive. Here on the floor of the House my friend Mr. Kazi eulogised Pandit Nehru for what he had done in Bihar. I wish, Sir, that many of us were in a similar position to praise and eulogise the

[Mr. H. V. Kamath]

leaders of the Muslim League when similar and worse things happened in Bengal and some other parts of India. It is well known that when these outrages were committed in East Bengal and many other parts of India, when men were massacred, women were humiliated and children were burnt in fire and oil no leader of the Muslim League raised his little finger nor did even one Muslim League leader go into those parts and did what Pandit Nehru did in Bihar. Is this the way in which we are going to build up a strong united India? Is this the spirit that is going to animate us in future? Only yesterday I read a statement from the head of the Muslim League where he mentioned Pakistan and Muslim India. I expected that at least after the division of India into Pakistan and India or Bharatvarsha on a communal basis the hatchet had been buried fathoms deep. But the same spirit is abroad and that spirit has not been stilled. People thought of Pakistan and the rest of India.....

**Mr. President:** The Honourable Member should confine himself to the subject under debate.

**Mr. H. V. Kamath:** I was trying to make out that today what is needed is a dynamic spirit of unity, of action, of sacrifice and of faith. Let us not forget the grand, beautiful vision painted by our poet, Viswakavi Rabindranath in words of matchless beauty. That vision should animate us and guide us in our future labours 'so that we can all build up a great India worthy of our past and worthy of the sacrifices which our martyrs have undergone. Permit me, Sir, to quote those words which picture a vision of matchless beauty:

"Where the mind is without fear and the head is held high,  
Where knowledge is free,  
Where the world has not been broken up into fragments by narrow domestic walls,  
Where words come out from the depth of truth,  
Where tireless striving stretches its arms towards perfection,  
Where the clear stream of reason has not lost its way into the dreary desert sand of dead habit,  
Where the mind is led forward by Thee into ever widening thought and action,  
Into that heaven of freedom, my Father, let my country awake."

Jai Hind.

**Mr. President:** I understand that Pandit Jawaharlal Nehru would like to accept some of the amendments. If so it might cut short the discussion to some extent. I should like him to make a statement before the discussion proceeds further.

**The Honourable Pandit Jawaharlal Nehru:** Sir, I venture to intervene in order to make clear which of the amendments I am prepared to accept and which not. Four amendments have been moved. I may say at the outset that I am prepared to accept Sir Gopaldaswami Ayyangar's amendment and not the others. Pandit Bhargava's amendment is more or less the same; it is only a question of wording. The others raise entirely different issues; for instance, the issue of ministers

being, elected by proportional representation. I can think of nothing more conducive to creating a feeble ministry and a feeble government than this business of electing them by proportional representation and I would therefore like the House to reject this amendment.

The other one raises a completely different issue, as to what the nature of the constitution should be. For instance, Mr. Karimuddin's amendment says that "that executive of the Union shall be non-parliamentary, in the sense that it shall not be removable before the term of the legislature," etc. That raises a very fundamental issue of what form you are going to give to your constitution, the ministerial parliamentary or the American type. So far we have been proceeding with the building up of the constitution in the ministerial sense and I do submit that we cannot go back upon it and it will upset the whole scheme and structure of the constitution. Therefore I regret I cannot accept this amendment of Mr. Karimuddin or of Mr. Pocker Sahib.

As to the other point raised it is perfectly true that the original draft that I placed before the House was not at all clear on various matters. It was not clear because there was no intention of drafting it here. These are certain indications for future drafting and some things were obviously taken for granted. It was taken for granted that the Prime Minister would be sent for by the President because he happens to represent the largest party or group in the House; further that the Prime Minister would select his ministers and further that they would be responsible to the House collectively. All that was taken for granted, but perhaps it is better to put that down clearly and the amendment moved by Sir Gopalaswami Ayyangar puts that down very clearly. Therefore I accept that amendment and I hope the House also will accept it and reject the others.

**The Honourable Mr. Hussain Imam** (Bihar : Muslim) : Sir, I had no intention of intervening in this debate because the subject matter of debate as to whether the executive should be parliamentary or non-parliamentary is one which though of great academic interest is not practical politics due to opinion in India being so much in favour of the British model that it is useless for any one to try and sing the praises of the American system and get it adopted. Constitutions are made—although there is an element of finality about them—only for a time; and I hope to live and see the British model dethroned, just as British power is being dethroned, and the better model adopted. But I have been forced to come here because of the speech of Mr. Kamath. Mr. Qazi spoke in praise of the activities of Pandit Nehru in Bihar. I was an eye-witness and saw his torn shirt and the amount of labour that he put in. When an opposite party man admires the other it is not an occasion to be utilised for maligning that party. The endeavour should not be to accentuate differences but to bring about greater unity.

Singularly ill-timed was the attempt of Mr. Kamath to state certain facts which were terminological in exactitudes. It is wrong to say that the League High Command never condemned the atrocities perpetrated on non-Muslims.

**Mr. President:** I am afraid we are straying into irrelevant discussion.

**The Honourable Mr. Hussain Imam:** I am not going to discuss this matter. I am simply mentioning that what he mentioned were not

[The Honourable Mr. Hussain Imam]

the facts. The fact that Pandit Jawaharlal Nehru went to Bihar was due to the reason that the Congress High Command was in control there, and the Congress High Command was in a position to intervene. But in Punjab the League was not the party controlling the Ministry: it was under section 93; in the N.W.F.P. the Congress was in power.

**Mr. President:** I would remind the Honourable Member that we are not considering the conduct of any Ministry or of Pandit Jawaharlal Nehru or of anybody else. We are discussing a simple clause of the Constitution. I would request him to confine himself to that.

**The Honourable Mr. Hussain Imam:** I hope you will not allow such digression to be made by others as well.

Sir, I was saying that the American system has got great advantages which are not appreciated at the moment. A few days ago I learnt that Harold has written a book condemning the American system of having an irremovable executive. He has praised the British system which we are adopting. What are the facts of the British system? The fact that the executive is removable in Britain does not differ materially in the day to day administration from the irremovable character of the American system. The power of not voting supplies, which is the essential part of the Ministry's working, is vested in the Legislature so that in the British system as well as in the American system the Legislature is absolute, though in the American Constitution there is the Presidential Veto. But there again they have provided so many checks and balances that the Presidential Veto can be overthrown by a two third majority of the House of Representatives and the Senate. So you find that the control of the purse by the Legislature is absolute practically in the Parliamentary system and in the non-parliamentary executive system of America.

Now, so far as legislature is concerned, the same thing applies. The Legislature is supreme with certain safeguards. Now, the very fact that a man is appointed who is not a member and the other man is appointed who is a member does not make any great difference in the day to day administration.

Some people have rightly opined that in times of crisis it is better to have one central control rather than a multitude of small minds working together and bringing about a kind of chaos. Well, if a system can work better in times of crisis, I do not understand why it should fail when there is no crisis. Crisis is an extraordinary state of affairs, a really complicated and difficult state of affairs. If a system can work at such a time, it stands to reason that it will work and work smoothly when the times are normal. I, therefore, am of opinion that the non-parliamentary system by means of which the President who gets not less than 51 per cent of the votes of the entire Nation is a better custodian of the Nation's interests than the Prime Minister who, after all, represents only one constituency and the majority of his own party members. The illustration which Mr. Tajamul Hussain has given was a little amiss. He said that the Prime Minister can be elected by the Opposition and the Government party combined together. He gave an illustration that, if there are 100 men in one party and 50 in another, then at the time of electing the leader, 60 vote for one and 40 for another. The man who was rejected by his own party, and might have gone over to the other party, secures 50 votes from the second party and 40 from the first and gets elected in spite of the fact that the majority of his own party was

not with him. That apprehension is perhaps, based on inexperience. In political parties the differences which exist inside are never ventilated outside. A man who will betray his own party and go over to the opposition will not get a single vote of his own party. In these days of democracy, such things are not possible. Rare instances of this nature may perhaps exist in one corner or other, but on broad outlines, you cannot have this kind of fissiparous tendency. Will the Opposition support a Quisling from the Government? How can that position be allowed? He is not a partyman. That is a contingency which will not arise. But the possibility that a Prime Minister might represent only a minority of the House is worth considering. The system of party working is such that if you belong to one party and secure the votes you are likely and almost sure to get all the votes in the instance which Mr. Tajamul Hussain gave, what will happen is that the man who secures 60 votes out of 150 will ultimately be the Prime Minister. Now you ask the President to act not on his own judgment, but on the judgment of this man who secured a minority of the votes of the House. He gets 60 out of the 150 votes, of 40 per cent only.

I therefore regard that the system whereby discretion is left to the President to nominate his own Ministers is more democratic and based on better and sounder principles than the system of copying the British model. The British system was found unequal to the task when was worked in France where the tendencies are to have small groups and parties. They found there ever and anon that the British system was unsuitable. U.S.A. has a different system giving the President perfect latitude to form a Government suited to the occasion. For instance, during the war President Roosevelt nominated two Members to his cabinet from the party in Opposition, and they were given very important portfolios. So you have the same system of coalition Government in America without any of the defects which a coalition presupposes. A coalition is composed of divergent elements, each pulling in different ways. I personally think that the American system is not a quarter as bad as has been stated. It is said that the executive is not removable. But the fact is that the executive is more, easily removable in the American system than in the British system. Many Members will remember the howl which was raised when Lord Templeton (Ex Sir Samuel Hoare) was turned out of the British Cabinet in the days of the Spanish crisis.

But in America everyday you find one Secretary of State being turned out and another being appointed. General Marshall has just come in without any furore being made. There is no one to question the right of the President to select an executive head for the time being. I do not wish, Sir, to detain the House by making a long speech. I wish only to make my position clear. This is my personal opinion, not that of my party, but I thought that it would be better if I explained that the American system is not as bad as it has been painted by its traducers.

**Mahboob Ali Baig Sahib Bahadur** (Madras: Muslim) : Mr. President, Sir, Clause 10 as amplified by Sir N. Gopalaswami Ayyangar introduces a type of executive which is British and which is commonly known as parliamentary. The amendment moved by Kazi Syed Karimuddin Saheb seeks to amend this clause by introducing a mixed type of executive, the Swiss type. Now, let us examine whether the type of executive contemplated by the amendment of Kazi Saheb is undemocratic, is impracticable and does not meet the present circumstances in the country.



[Mahboob Ali Baig Sahib Bahadur]

Under these three heads it is necessary for this House to deal with this subject. Now, Sir, as you know, the British parliamentary system is not a statutory one. It is a historic growth covering several centuries of struggle between the people and the king, to snatch as much power as possible for the representatives of the people to administer the State. It is no doubt true that members of the Parliament are elected; and after the members are elected, the leader of the majority party is called by the Head of the State, *viz.*, the King, to form the Government, *i.e.*, he chooses his own ministers. Up to the stage of the return of the members to Parliament, it is democratic. From that stage, it ceases to be democratic, for the leader of the majority party may choose anyone he pleases. The ministers no doubt belong to the party which has been favoured by the electorate, but particular ministers, are not chosen by the members of Parliament. Then, Sir, the Government is formed, and it is in the saddle so long as it carries the confidence of the Parliament. But take the case of a certain section of the Parliament not being satisfied with the executive but unable to throw out the Government. It may be that that small section are the people in whom the majority of the electorates have confidence. The anomaly is that the electorate, the real sovereign, is not in a position to throw out the Cabinet. You will therefore see, Sir, that the parliamentary executive ceases to be really democratic. In the first place, parliament does not choose the ministers; in the second place the electorate cannot turn them out. So, really, Sir, from that stage the parliamentary democracy obtaining in England which is sought to be introduced here is not democratic. Let us examine the position taken by Kazi Saheb. After the elections take place, the members of Parliament will elect their own ministers. So, Sir, it is more democratic than the British parliamentary type. There are two processes. One is that members of the Parliament are elected by the people, and the second is that the members of Parliament, the real representatives of the people, elect their own ministers. Let us see whether the system which is sought to be introduced by this amendment is practicable in the circumstances obtaining in the country. I once before said that the democratic system of election of members of Parliament and the election of the Cabinet must be one which will reflect all the sections of the country.' It is no use being blind to the realities of the situation. It is no doubt true that people should not think in terms of sections, communities, and special interests. But every day we find that even the parties like the League and the Congress, both inside and outside this House, have always been saying there must be protection of minorities—religious minorities, sectional minorities and the oppressed minorities and minorities belonging to different tracts of the country. These facts. Let us not be blind to these facts. Now if the Leader of the party is called upon by the, Head of the State, what he does naturally—and we expect him to do it—is that he would form a Cabinet of men consisting of persons representing some interests or some communities. He is going to do that. It may be by convention or good sense, but that is going to happen. But if that does not happen and he cannot be forced to do it, then, Sir, there will be a lot of discontent, distrust and all that sort of thing. So if we provide in the Constitution itself a democratic system of forming a Cabinet by electing ministers and you introduce a system of election which is called proportional representation by the single transferable vote for non-transferable vote as the cue may I be, then it will be satisfactory. It will be democratic and it will reflect all the sections of the people. Besides that, Sir, as I submitted, it is not possible for the people to turn out a reactionary Cabinet. The party in power may still consist of a majority of persons who are reactionary and whom the electorate may have no confidence. But in any case the Cabinet will continue and is expected to continue for the full term of four or five years.

In this amendment you have the advantage of the democratic method of electing persons to your Cabinet and having elected them, you ask them to continue, while the person who is elected under the British type always stands in fear of being turned out. So, Sir, if you make this executive not removable for the period, he will be in a better position to work, develop schemes and see to their completion. So, Sir as I said, this Swiss type has got the advantage of being democratic at certain stages. It is possible for all sections of the country to be represented, it will work better and can complete its schemes and in the present circumstances of the country, is the most suitable and there is nothing wrong in introducing this system. Further, let us remember these systems—the Swiss and the American types—are the result of the experience gained by the other countries where democracy has worked, and it is the considered opinion of the Constitutionists that the British system is not democratic. After all, who holds the power even in that democracy, in that Parliament? Virtually it is the Prime Minister or his executive; and on account of what is called the discipline in the Party what is considered to be good by that party, Cabinet or the Premier must be followed by all the Members or else disciplinary action will be taken against them. I therefore think, Sir, that the Swiss system that is contemplated by the amendment of Kazi Syed Karimuddin has much to commend it.

**Mr. President:** I think we have had enough discussion on this clause and I would like to put the amendment and the clause to vote now.

**Mr. K. M. Munshi** (Bombay: General): I move closure.

**Mr. President:** There is a closure moved by Mr. Munshi. I take it that the House accepts the closure.

The question is:

“That for Clause 10 the following be substituted :

‘There shall be a Council of ministers elected by the National Assembly by a system of proportional representation by single transferable vote and the council of ministers shall be responsible to the National Assembly’.”

The amendment was negatived.

**Mr. President:** I will put the amendment of Kazi Syed Karimuddin to vote:

“That the following be added at the end of Clause 10:

‘That the Executive of the Union shall be non-parliamentary in the sense that it shall not be removable before the term of the Legislature and a member of the Cabinet or the Cabinets may be removed at any time on impeachment before a judicial tribunal on the ground of corruption or treason.

The Prime Minister shall be elected by the whole House by single transferable vote. Other Ministers in the Cabinet shall be elected by single non-transferable vote’.”

The amendment was negatived.

**Mr. President:** I will now put Sir Gopaldaswami Ayyangar's amendment to vote:

"That at the end of Clause 10, the following be added :

'The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister. The Council shall be collectively responsible to the House of the People.'

This has been accepted by the Mover.

The amendment was adopted.

**Mr. President:** There is another amendment by Mr. Thakurdas Bhargava. I think that is covered by this amendment and it is not necessary to take the vote of the House on it.

I will now put the original clause as amended by Sir Gopaldaswami Ayyangar's amendment.

Clause 10, as amended was adopted.

#### CLAUSE 11

**Mr. President:** Clause 11. Sir Gopaldaswami Ayyangar.

**The Honourable Sir Gopaldaswami Ayyangar :** I beg to move Clause 11.

"11. The President shall appoint a person being one qualified to be appointed a judge of the Supreme Court to be Advocate General for the Federation, to give advice to the Federal Government upon legal matters that may be referred to him."

**Shri Gokulbai D. Bhatt:** \*[Sir, I withdraw my amendment in favour of the amendment to be moved by Sir Alladi Krishnaswami Ayyar.]\*

**Sir Alladi Krishnaswami Ayyar:** Mr. President. I beg to move the following amendments to clause 11.

(1) That in clause 11 after the word 'referred', the words 'or assigned'; be inserted.

(2) That at the end of clause 11 the following be added:

'by the President or are assigned to him under this Act or by any Federal Law, to exercise the powers and discharge the duties vested in him under this Act or under any Federal Law and in the performance of his duties he shall have right of audience in all courts in the Union of India. The Advocate-General shall hold office during the pleasure of the President and shall receive such remuneration as the President may determine'."

This is merely a formal amendment, because there are three sets of duties. There are duties which are assigned to him by the President. There are other duties which are referred to him. There are statutory duties under various Acts. It is only to see that the provision is complete that this amendment is moved. I presume there will be no opposition to this.

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

(No member rose to speak)

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

**Mr. President:** I shall put them to vote unless Sir Gopaldaswami Ayyangar wants to say anything.

**The Honourable Sir N. Gopaldaswami Ayyangar:** I accept the amendments.

**Mr. President :** I shall put to vote the amendments first:

“(1) That in clause, 11 after the word ‘referred’ the words ‘or assigned’ be inserted.

(2) That at the end of clause 11, the following be added:

‘by the President or are assigned to him under Act or by any Federal Law, to exercise the powers and discharge the duties vested in him under this Act or under any Federal law and in the performance of his duties he shall have right of audience in all courts in the Union of India. The Advocate-General shall hold office during the pleasure of the President and shall receive such remuneration as the President may determine’.”

The amendments were adopted.

**Mr. President:** The clause, as amended, is put to vote.

Clause 11, as amended, was adopted.

#### CLAUSE 12

**The Honourable Sir N. Gopaldaswami Ayyangar:** Sir, I beg to move Clause 12 which runs in the following terms:

“12. All executive action of the Federal Government shall be expressed to be taken in the name of the President’.”

Very little is required by way of explanation.

(Messrs. M. Ananthasayanam Ayyangar and Kazi Syed Karimuddin did not move their amendments.)

**Mr. President:** I do not think there is any other amendment to this clause. If any member has given notice of any amendment to this which I have not noticed, he may move.

(No member rose to speak.)

**Mr. President :** As there is no other amendment, I shall put the clause to vote.

Clause 12 was adopted.

#### CLAUSE 13

**Mr. President:** Clause 13.

**Mr. R. K. Sidhwa:** (C. P. & Berar: General): There is a new clause 12-A, Sir. The additional clauses treat stands in my name reads thus:

“That after Clause 12, the following new clause be added :

12-A. The Federation shall make laws for—

- (1) the Socialist system of economy nationalisation of high industries, administration on co-operative basis of trading enterprises;
- (2) equalisation of capital by private owners;

[Shri R. K. Sidhwa]

- (3) prevention of exploitation;
- (4) abolition of unemployment, and guaranteeing the right of work to every citizen;
- (5) recreation, annual vacations, leave with wages for maternity period, child welfare, rest homes, clubs and comfortable dwelling houses for all classes of workers;
- (6) right to maintenance in old age, family provision in case of sickness or loss of capacity to work, free medical aid.....”

**Mr. President:** I think these would come under Part III. When we take it, you may move this. So far as the fundamental rights are concerned, they have already been accepted by the Constituent Assembly and they will again come up at the final discussion. This is only with regard to broad constitutional principles. They will be taken up I think at the final discussion.

Now, Sir Gopaldaswami Ayyangar, Clause 13.

**The Honourable Sir N. Gopaldaswami Ayyangar:** Sir, I beg to move Clause 13.

“13. The legislative power of the Federation shall be vested in the Parliament of the Federation which shall consist of the President and the National Assembly, comprising two Houses, the Council of States and the House of the People.”

With regard to this, there is notice of an amendment that the words “the National Assembly comprising” be deleted. If that is done, the clause will read as follows:

“The legislative power of the Federation shall be vested in the Parliament of the Federation which shall consist of the President and two Houses, the Council of States and the House of the People.”

This is merely to avoid having too many designations for what will be the legislative of the Federation in the future. The Parliament of the Federation is to consist of the President and two Chambers. These words, “the National Assembly”, have been put in there for the purpose of referring only to the Houses to the exclusion of the President. It seems, Sir, that it is unnecessary to have this expression “National Assembly” coming in between the Parliament and the two Houses. It is therefore considered desirable that we omit all reference to “National Assembly” and make the clause read as I have indicated. I think the notice of amendment has been given by Mr. K. Santhanam and I wish to say at the outset that I shall be prepared to accept it.

**Mr. R. K. Sidhwa:** Sir, my amendment as stated in the paper reads thus:

“That in Clause 13 after the words ‘in the Parliament of the Federation’ the words ‘to be known as Congress’ be inserted.”

My object is, Sir, that the freedom that we have attained is under the aegis of the Indian National Congress and I desire the name ‘Congress’ to be perpetuated in our future Constitution. I understand, Sir, it is the desire of several honourable members that the various words that have to come in the Constitution should be left over for consideration. Under these circumstances, I do not propose to move, it now but I do desire that the word ‘Congress’ must find a place in our Constitution so as to perpetuate this memorable name under which we have fought for 65 years in the History of our country.

**Mr. Mohd. Tahir** (Bihar: Muslim): \*[Sir, in the amendment which I have suggested much thought has not been given to the language. Since we have to discuss on principles, my amendment would read like this:

“That in Clause 13, for the words ‘comprising two Houses, the Council of States and’, the word ‘namely’ be substituted.”

My aim in suggesting this amendment is that in the original resolution where two assemblies have been mentioned and it has been said that there ought to be two Houses, I want to keep one House only.

Sir, we have the picture of one new India before us now, with the crown of freedom in her hands. When we are to forge a new Constitution for her and before I place my humble views regarding that before the House, I want to repeat the couplet:

“Sare Jahan se achcha Hindustan Hamara  
Ham bulbulen hain uski woh gulstan Hamara

After this, I shall say only this much about the amendment, that when we are making a Constitution for India, it is our duty that we should make such a model constitution that all in the country may feel that this Constitution has been made for them and it is theirs. It must not be that, on looking to that Constitution, the common man may say that though the Englishman has left India, his ghost is yet stalking the country. But this constitution clearly betrays that his ghost is haunting us. I think that if you look at this Constitution and at this clause, which is before us now, you will feel that though no doubt the Englishmen are quitting India, his ghost is walking here. Before framing a constitution for a newly born nation or for a country which has attained freedom. the most essential thing, to mind, is to change its past traditions and old constitutions, which were hitherto in vogue, in such a way as to transform the whole mentality of the people of that country. Sir, you know how during the past so many years of their rule in India, Britishers have changed and enslaved the mentality of the people. Therefore, when we frame a new Constitution, it becomes our duty to make it in such a way as to transform our mentality from that of slavishness to freedom. The old mentality reminiscent of British slavery must be uprooted. I beg to state that in all the countries various forces are at play—in some countries Socialism works well, in others Communism works well, yet in some others fascism is to be found and in some Capitalism and Imperialism flourish. Unfortunately, though Capitalism and Imperialism, the Britishers have brought India to her present distress and miserable plight Sir, I would like to point out that before framing the Constitution of the country, we should scan the history of India during the short period of 1919 to the present day. Sir, from 1919 to 1935 many Constitutions were framed but all of them the product of British Imperialism. In 1919, local self-government was conceded to India; councils were created, even a council was formed for the centre. It was self-government only in name. But, Sir, if you think over it a little you will find that Imperialism and Capitalism were at its back and they were in full play then. Hence the local bodies could not function freely. This was because imperialism was associated with them. The masses used to send their elected representatives

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\*[ English translation of Hindustani Speech begins.

[Mr. Mohd. Tahir]

to the local bodies, but the presence of nominated members there used to counteract the influence of the elected ones. And this system still continues. Similar was the case in the Councils; the influence of the elected representatives was weakened by the nominated members; and any programme for the betterment of the country put forth by the elected representatives used to be opposed by the nominated members. That was the state of affairs under the Act of 1919.

Thanks to God Almighty, when Imperialism and Capitalism were at work in India, a party under the leadership of Mahatma Gandhi came forward to voice the feelings of the poor Indians, and that voice was raised so vociferously that today we find India on the threshold of freedom. Is it then befitting for us today to frame a constitution for India, which smells strongly of Capitalism and Imperialism, nay it fosters them? After some struggle and haggling the 1935 Act was enacted. When, after the Act of 1935, the British Government found that very great political consciousness had been developed in India, and she was pressing her demands more insistently, it changed the Act of 1935. Legislative Assemblies were established in the provinces, where only the elected representatives of the people were to manage the affairs of the Government. But of what good could those provincial assemblies be, when the Upper Houses and the Council of State were tacked on to them? It was a creation of the Imperialistic mind. Thus the democratic atmosphere of the provincial Assembly was negatived, because the Britisher knew that for keeping his Capitalistic outlook safe in India no better plan could be devised. Hence, I would like to point out that nominations, Upper Houses, and similar other tools were the creation of Imperialism. Therefore, when we are framing the Constitution of free India we should keep these things in mind. The Constitution, which we now frame, should be such that we may be sure that it would be acceptable to the people, and they would willingly work it. I would like to ask a few simple questions of the Honourable Mover of this clause. Is he of the opinion that without having two Houses, the Progress of India or of any other country would be hampered, or no good laws can be enacted? May I ask him whether an assembly, better and more responsible than the present one, has ever before assembled in India I would say that never before did an assembly, more responsible than this, sit in India. Do we not see that one House is carrying on all this work, and is framing the Constitution? After some weeks this very Assembly would function, as the Federal Parliament, where laws would be enacted. If the principle that two Houses are essential is accepted, then this Constituent Assembly should be dissolved and reshaped to contain two Houses. If the Honourable Mover cannot divide the Constituent Assembly into two Houses, and he cannot have two Houses of the ensuing Federal Parliament, then it becomes quite clear that he himself does not believe in the principle that two Houses of legislature are essential. But he is making this proposal because of a certain force or pressure upon him—the forces of capitalism. I would like to tell him that the Council of State nominations, and Upper House were the creations of Imperialism. Does it mean that poor India is still to labour in the same old way, which though more expensive, added nothing to the efficiency of work? It should not be that even after the Britishers have quitted the country and our Government is established they may have the check to say that their work is still being continued in India. Their work will continue to be accomplished through the devices of the Upper House, nominations, Council of State, etc. With these words, I sit down. If my words have aggrieved anyone, I ask his pardon.]\*

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] \*English translation of Hindustani Speech ends.

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

**Mr. S. V. Krishnamurthy Rao** (Mysore State) : I rise on a point of Order. Under Rule 32, Clause (1), an amendment must be relevant to the motion to which it is proposed. In the motion that is proposed now there is no word "Lower House" and the amendment seeks to define what the Lower House means. So this amendment is out of order.

**Sir V. T. Krishnamachari** (Jaipur State): I was just going to say the amendment is not going to be moved.

**Mr. President:** So the point of order does not arise.

(Shri Mohanlal Saxena did not move his amendment.)

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

"That in clause 13, the words 'the National Assembly, comprising' be deleted."

Already, Sir, N. Gopaldaswamy Ayyangar has explained why these words should be deleted. I fully sympathise with the Union Powers Committee in their desire to appropriate all the good words. The expression 'National Assembly' is certainly a very attractive expression, but we must also have the word 'Parliament'. They have devised an ingenious formula for appropriating both these expressions. The word 'National Assembly' is to mean the two Houses taken together and the word 'Parliament' is to mean the two Houses plus the President. However ingenious it may be in practice it will be most inconvenient and when it comes to translating it into Hindustani, matters will be worse. It will be bad enough to find a suitable translation for 'Parliament' and if we are to find one for 'National Assembly' also, it will be almost a hopeless task. Therefore I move this amendment.

**Mr. President:** There is no other amendment. Now, the clause and the amendments that have been moved are open to discussion.

**Prof. Shibban Lal Saksena** (United Provinces: General): Mr. President, Sir, in this motion we have been asked to vote for two Houses, the Lower House and the Upper House. I wish to point out that our experience in the last so many years has been that the Upper House acts as a clog in the wheel of progress. I do not think it is very wise to continue the same thing again in our new constitution. I think that everywhere in the world the experience about Upper Houses has been the same. In no country an Upper House has helped progress. It has always acted as a sort of hindrance to quick progress. Therefore, if we are not careful at present, we shall not be able to make as rapid progress as we need. India is probably the biggest nation in the world. We will have to catch up with Russia and America if we want to occupy our proper position in the international field. In the next five or ten years we will have to cover the progress which in the normal course would take fifty years. I do not think two chambers will help us in the realisation of our new programme with the required rapidity. Therefore I think that the Mover will kindly review this matter and see that in our new constitution we do not have two Chambers.



**Mr. Naziruddin Ahmad** (West Bengal: Muslim): Mr. President, Sir, I beg to support the clause as it stands and therefore oppose the motion to omit the Second Chamber. We are going to obtain supreme sovereign powers. We have to deal with foreign and domestic matters of extreme importance. In these circumstances it will be wise for us to have two Houses. A popular House is known for its vitality and vigour and that House will have the exclusive power in regard to money. But a Second Chamber introduces an element of sobriety and second thought. In these circumstances it would be wise for us, especially in view of many foreign subjects which are looming large in our minds, to have a Second Chamber would be a disadvantage is, I think, not correct. I submit. Sir, that a second Chamber would not only be an advantage but an absolute necessity.

Then again, we have to consider the entry of the States into the Federation, and if we have this in mind, a Second Chamber would be an absolute necessity. Without a Second Chamber it would be difficult to fit in the representatives of the States in the scheme of things.

With these few words Sir, I would oppose the amendment to do away with the Council of States, that is, the Second Chamber.

**Mr. President:** No one else wants to speak probably. Then, the Mover can reply, if he desires to.

**The Honourable Sir N. Gopaldaswami Ayyangar:** Sir, I do not think any elaborate justification is necessary for this clause which states that there will be two chambers in the Federal Legislature. The need for a Second Chamber has been felt practically all over the world wherever there are federations of any importance. After all, the question for us to consider is whether it performs any useful function. The most that we expect the Second Chamber to do is perhaps to hold dignified debates on important issues and to delay legislations which might be the outcome of passions of the moment until the passions have subsided and calm consideration could be bestowed on the measures which will be before the Legislature; and we shall take care to provide in the Constitution that whenever on any important matter, particularly matters relating to finance, there is conflict between the House of the People and the Council of States, it is the view of the House of the People that shall prevail. Therefore, what we really achieve by the existence of this Second Chamber is only an instrument by which we delay action which might be hastily conceived, and we also give an opportunity, perhaps, to seasoned people who may not be in the thickest of the political fray, but who might be willing to participate in the debate with an amount of learning and importance which we do not ordinarily associate with a House of the People. That is all that is proposed in regard to this Second Chamber. I think, on the whole, the balance of consideration is in favour of having such a chamber and taking care to see that it does not prove a clog either to legislation or administration.

Nothing more is really needed from me to commend the clause as it is to the House, with the small amendment which was moved here.

**Mr. President:** I shall first put the amendment of Mr. Mohammad Tahir :

“That in Clause 13, for the words ‘comprising two Houses, the Council of States and’, the word ‘namely’ be substituted.”

The amendment was negatived.

**Mr. President:** Then I put Mr. Santhanam’s amendment:

“That in clause 13, the words ‘the National Assembly, comprising’ be deleted.”

The amendment was adopted.

**Mr. President:** I shall now put the whole clause as amended.

Clause 13, as amended, was adopted.

#### CLAUSE 14

**Mr. President:** We shall now pass on to Clause No. 14.

**The Honourable Sir N. Gopaldaswami Ayyangar:** With your permission, Sir, and with the permission of the House, I propose simply to formally move this Clause 14, and to request you to hold over the moving of the amendments and the discussion of this clause to a subsequent day. The clause relates to the composition of the two Houses of the Legislature. A very large number of amendments have been sent in and they raise certain points of importance both to the Provinces and to the Indian States. A good deal of discussion—lobby discussions—has been going on with reference to the merits of these amendments and it seems quite possible that as a result of those discussions, we may be able to put before the House something which will be acceptable to all sides of the House. I only pray, Sir, that you will approve of the Procedure I am suggesting, and if you do so, I shall simply read out the clause, Clause 14.

**Mr. President:** I think the House has no objection to accepting the suggestion, that the discussion on this clause be held over for the present and that the clause be moved formally today.

**Honourable Members:** Yes.

**The Honourable Sir N. Gopaldaswami Ayyangar:** Sir, I beg to move Clause 14.

“14. (1) (a) The Council of States shall consist of—

- (i) not more than 10 members nominated by the President in consultation with Universities and scientific bodies;
- (ii) representatives of the Units on the scale of 1 representative for every whole million of the population of the Unit up to 5 millions *plus* 1 representative for every additional 2 millions of the population, subject to a total maximum of 20.

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

- (b) The representatives of each Unit in the Council of States shall be elected by the members of the Lower House of the Legislature of such Unit.
- (c) The House of the People shall consist of representatives of the people of the territories of the Federation in the proportion of not less than 1 representative for every million of the population and not more than 1 representative for every 7,50,000 of the population.
- (d) The ratio between the number of members to be elected at any time for each constituency and the population of that constituency, as ascertained at the last preceding census shall, as far as practicable, be the same throughout the territories of the Federation.

[The Honourable Sir N. Gopaldaswami Ayyangar]

(2) The said representatives shall be chosen in accordance with the provisions in that behalf contained in Schedule:

Provided that the elections to the House of the People shall be on the basis of adult suffrage.

(3) Upon the completion of each decennial census, the representation of the several Provinces and Indian States or groups of Indian States in the two Houses shall be readjusted by such authority, in such manner, and from such time as the Federal Parliament may by Act determine.

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

(5) The House of the People, unless sooner dissolved, shall continue for four years from the date appointed for its first meeting and no longer; and the expiration of the said period of four years shall operate as a dissolution of the House:

Provided that the said period may, during an emergency, be extended by the President for a period not exceeding one year at a time and not exceeding in any case beyond the period of six months from the expiry of the period of the emergency."

**Mr. President:** We shall take up the discussion of this clause at a later stage. We shall proceed to Clause 15.

#### CLAUSE 15

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

"There should be the usual provisions for the summoning prorogation and dissolution of Parliament, for regulating the relations between the two Houses, the mode of voting, privileges of members, disqualification for membership, Parliamentary procedure; including procedure in financial matters. In particular, money bills must originate in the Lower House. The Upper House should have power to suggest amendments in money Bills; the Lower House would consider them and thereafter, whether they accept the amendments or not, the Bill as amended (where the amendments are accepted) or in its original form (where the amendments are not accepted) shall be presented to the President for assent and, upon his assent shall become law. If there is any difference of opinion as to whether a Bill is a money Bill or not, the decision of the Speaker of the House of the People should be final. Except in the case of money Bills both the Houses should have equal powers of legislation and, deadlocks should be resolved by joint meetings of the two Houses. The President should have the power of returning Bills which have been passed by the National Assembly for re-consideration within a period of six months."

Sir, these are matters for which provision is made in all constitutions and they will follow the usual type in our own constitution. This clause only gives authority for the draftsmen to put the necessary provisions in.

(Amendment Nos. 300 and 301 in List II and amendment No. 17 in Supplementary List No. 1 were not moved.)

**Shri K. Santhanam:** Sir, I move:

"That in Clause 15 for the last sentence the following be substituted:

'Bills other than money bills, presented to the President for assent may be returned by him to the Federal Legislature for re-consideration, but no such return shall be made later than six weeks after the passing of the Bills by the Assembly.'

This is intended to make two changes. Now according to the clause as it stands, Bills are to be returned within a period of six months, and as the clause stands, the words "re-consideration within a period of six months" are subject to an ambiguity—whether a Bill should be returned within six months or whether the National Assembly should meet and consider it within six Months. Besides, the period of six months is

considered' to be, by many of my friends, too long, a period and therefore this amendment of a period of six weeks has been prescribed for return of Bills by the President.

Then all Bills are liable to be returned under the new clause as it stands. This is obviously inconvenient for, money Bills. There should be no power in the President to return money Bills because they are matters of urgency and when the House passes them, it should be taken as final.

Even the Upper House is not considered competent to change money Bills. So when revisionary powers, are taken away from the Upper House there is no reason why power should be vested in the President. Sir, I move:

**Mr. President:** There is no other amendment. So the original clause and amendment are open to discussion.

**Sri M. Ananthasayanam Ayyangar** (Madras: General): I support this amendment. I would be glad if in respect of money Bills some provision is made for lessening the period within which it will be open to the President to return them for re-consideration. I have known that in many matters when Bills were passed by the Central Legislative Assembly we had to regret that some provisions crept in which were absolutely contrary to your intentions, and even in respect of a money matter it so happened that in the Budget we voted down an amount which we did not like to vote down and it went to the Upper House and subsequently in another form it had to come back on the intervention of the Governor-General. Even in a money Bill mistakes occur and we want to correct them. As it is, there is no provision for the Assembly to review its own money Bill except by an amending Statute. I do not see why such a provision should not be made even with regard to money Bills. It is true that power ought not to be vested in the President to clog the progress of a money Bill in case of emergency. I wish the draftsmen who will put in details at a later stage will consider the desirability of giving a power to return a money Bill not later than ten days for any technical flaw which may have to be corrected; otherwise for any matter of substance it need not be open to the President to return it, when such matters must be left entirely to the decision of the Lower Assembly, and the President ought not to take the place of or be a substitute for the Lower Assembly or the Upper Chamber in such matters.

As regards the need to return these Bills, I have said that there are many cases where what one House has done in haste has been corrected by another, and even when both the Houses have bestowed their attention there are many matters which may have to be sent for reconsideration. The present provision in the Government of India Act is for the Governor-General to reserve certain Bills for consideration by His Majesty and the same Bill may be returned with suggestions as to which modifications have to be effected.

I would like to make some more suggestions with regard to some other matters which should be included in Clause 15. The amount of care or limitation with which the other clauses have been drafted, this clause has not been drafted. A number of other items are absent. For instance there is no provision made with reference to Budget estimates. Under the existing Act the Budget is presented first to the Legislative Assembly and then to the Council of State. It is open to the Assembly and the Council of State to revise or alter or reduce it;

[Shri M. Ananthasayanam Ayyangar]

but if the Assembly refuses to vote a Demand, it cannot be restored by the Council of State. It is a matter of investing the Council of State with this power or taking away the power which the Legislative Assembly has. It is not merely a matter of form. I am sorry it is not included in the list of items for which provision has to be made along with other matters to be considered later.

I would also suggest that provision may be made for the summoning or dismissal of Ministers. There is no provision for it now. We have now made provision, by means of an amendment, summoning a Prime Minister who may later on choose other Ministers who will have to be accepted by the President. But, so far as dismissal is concerned, no provision has been made. If the Ministers lose the confidence of the House, it must be open to the President to call upon them to vacate their offices. Some such provision is necessary.

There are one or two matters more for which provision must be made in Clause 15. For instance, take Sections 103, etc., of the Government of India Act, providing for common legislation for two or more units. Now, there are States and Provinces federating with the Union. There may be certain subjects common to two States or Units. These subjects may be absolutely provincial subjects; all the same, for the sake of convenience, those two Units may require the Centre to pass legislation. With their consent, on the delegated authority, the Central Legislature may pass legislation. There is no provision here for that.

If we accept the three Lists, one of those Lists contains matter which is exclusively within the jurisdiction of the provinces. Special provision has to be made whereby in regard to certain subjects which are in the provincial List exclusively, if two or three Units are interested in a kind of common legislation there must be an authority which can attend to it and that authority is the Central Legislature which can pass legislation common to the concerned Units. Some such provision must be made in the Constitution and it must be included in Clause 15. The draftsmen of the Constitution may kindly take note of this.

**An Honourable Member:** Sir, I wish to point out an omission here, due probably to oversight. While considering Clause 15, in the latter part of it the words "National Assembly" were found. According to it, the President should have the power of returning Bills passed by the Assembly. Just now, while considering Clause 13, by an amendment of Mr. Santhanam, the words "National Assembly" have been omitted and 'Federal Parliament' inserted. I think the words 'Both Houses of Parliament' should be there.

**The Honourable Sir N. Gopalaswami Ayyangar:** Sir I accept the amendment moved by Mr. Santhanam.

With reference to the remarks of the last speaker I may point out that in Mr. Santhanam's amendment he has substituted the words 'Federal Legislature' for the words "National Assembly" already. Therefore the objection raised by the last speaker does not hold good.

There were a number of points mentioned by Mr. Ananthasayanam Ayyangar, the last point being that there should be provision for Federal Legislation in cases where two Units apply for such legislation on matters which might be common to both of them, and for other Units of the Federation to apply that legislation to themselves if they wish to do so. That is an important point, Sir. I could give him an assurance that, when the text of the Constitution comes to be drafted, provision will be made for that sort of thing, along with other matters which have not been specifically referred to in this draft of the principles of the Union Constitution.

I may mention, however, that provision for such matters will not fall under the routine items that are provided for in Clause 15. But I can assure him that the point mentioned will be kept in mind when the text is drafted. I have nothing more to say.

**Mr. President:** I will put the amendment to vote. The question is:

“That in Clause 15 for the last sentence the following be substituted :

‘Bills other than money Bills presented to the President for assent may be returned by him to the Federal Legislature for re-consideration, but no such return shall be made later than six weeks after the passing of the bills by the Assembly.’”

The motion was adopted.

**Mr. President:** I now put Clause 15, as amended, to vote.

Clause 15, as amended, was adopted.

#### CLAUSE 16

**The Honourable Sir N. Gopalaswami Ayyangar:** The next Clause is 16. It relates to language.

**Sri M. Ananthasayanam Ayyangar:** May I request the Honourable Mover not to move this Clause now? This may stand over.

**The Honourable Sir N. Gopalaswami Ayyangar:** I have no objection to it. But I wish to point out that this particular matter is not likely to come up for discussion during this session. If it is the wish of the House that I should not move this Clause, I shall not move it.

**Mr. President:** A suggestion has been made that this Clause 16 be not moved at this stage. I will put it to the House.

The question is:

“That the consideration of Clause 16 be postponed.”

The motion was adopted.

### Chapter III

#### CLAUSE 17

**The Honourable Sir N. Gopalaswami Ayyangar:** Clause 17 relates to the power of the President to promulgate ordinances during recess of Parliament.

“17. (1) If at any time when the Federal Parliament is not in session the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require.

[The Honourable Sir N. Gopaldaswami Ayyangar]

(2) An ordinance promulgated under this section shall have the same force and effect as an Act of the Federal Parliament assented to by the President, but every such ordinance—

(a) shall be laid before the Federal Parliament and shall cease to operate at the expiration of six weeks from the re-assembly of the Federal approving it are passed by both Houses, upon the passing of the second of those resolutions; and

(b) may be withdrawn at any time by the President.

(3) If and so far as an ordinance under this section makes any provision which the Federal Parliament would not under this constitution be competent to enact it shall be void.”

This clause provides for the issue of ordinances by the President. There can be no objection to the vesting of power of this very limited description for making ordinances in the President. The ordinances can be made only during periods when the legislature is not in session in the case of matters which cannot wait till the next session of the legislature, an ordinance made has got to be placed before the Parliament so soon as possible and shall cease to operate at the expiration of six weeks from the re-assembly of the Federal Parliament. Power is also given to the President to withdraw ordinances at any time during the interim period if he thinks that it is unnecessary to keep them in force. A power of this description of taking administrative action which has to be taken at once and which cannot wait till the Parliament is in session has been found to be necessary. Sir, I move.

**Mr. President:** Mr. Shibban Lal Saksena.

**Prof. Shibban Lal Saksena:** Sir, before I move this amendment, I want to know one thing. I had given notice of an amendment modelled on the Irish Constitution and in that I had given five clauses. One of them was that cow slaughter should be prohibited in Bharatvarsh by law. I cannot find that amendment in the printed list supplied to us.

**Mr. President :** Mr. Shibban Lal Saksena's amendment of which he gave notice relates to that part of the Constitution which you have already passed, *viz.* fundamental rights. They will come up again in their final form for discussion at the final stage. So that does not arise at this stage.

**Prof. Shibban Lal Saksena:** Thank you, Sir.

Sir, I desire that the whole of this chapter should be deleted. This chapter deals with the ordinance-making powers of the President. I think on account of the last so many years of foreign rule and rule by ordinances, we have become so much accustomed to ordinances that in the Constitution of free India, we have provided for this ordinance-making power without any compunction.

**Shri C. Subrahmanayam** (Madras : General) : Is the Honourable Member moving this as an amendment?

**Prof. Shibban Lal Saksena :** I am moving the amendment. Let me read out the amendment.

**Mr. President :** This is not an amendment. This is a negative of the original proposition. When all the other amendments have been moved you can speak. This is not an amendment so far as I can see.

(Mr. Nalavade did not move his amendment Nos. 324 and 325.)

**Mr. H. V. Kamath:** I am told, Sir, that separate provision will be made for the emergency powers of the President, and so at this stage I do not propose to move this amendment (No. 326).

**Shri H. V. Pataskar:** Sir, the amendment that stands in my name is as follows:

“That at the end of sub-clause (1) of Clause 17, the following proviso be added:

‘Provided that a session of the Federal Parliament shall be held within six months of the promulgation of such an ordinance.’”

So far as Clause 17 is concerned, it confers certain emergency powers of issuing ordinances upon the President. It is further provided in sub-clause (2) that an ordinance promulgated under this section shall have the same force and effect as an Act of the Federal Parliament. And sub-clause (2)(a) says that every such ordinance shall be laid before the Federal Parliament and shall cease to operate at the expiration of six weeks from the re-assembly of the Federal Parliament. The Honourable the Mover has explained that this should be done as early as possible. It was with the idea that the Federal Parliament should be called within six months of the promulgation of such an ordinance, that I tabled this amendment. Parliament will be in session some time during the year. Ordinances are obnoxious to democracy and at least to allay public suspicions it is necessary that there should be a provision that within six months of the promulgation of an ordinance a session of the Federal Parliament shall be held, I would therefore like to suggest that when the final draft is made, there should be a definite provision like this in the interests of all concerned, and hoping that this would be done, I do not propose to move this amendment at this stage.

**Mr. President:** Mr. Kamath.

**Mr. H. V. Kamath:** In view of what I stated about amendment No. 326. I am not moving this amendment (No. 328).

(Messrs. Jadubans Sahai and Biswanath Das did not move their amendment Nos. 329 and 330.)

**Mr. H. V. Kamath:** In view of the statement made by Mr. Pataskar, this does not arise (amendment No. 331.)

(Mr. Sidhwa did not move his amendment No. 332.)

**Mr. President:** There is no other amendment to this clause of which I have received notice. Therefore the clause is now open for discussion.

**Prof. Shibban Lal Saksena:** Mr. President, Sir, this clause gives the President over-riding powers over the entire National Assembly. We have been accustomed to ordinance rule long enough and I wish that now when we are framing the Constitution of free India, we do not provide for this power again. Sir, even during the Great War, the President of the United States of America and the Premier of England did not have the power. When we start our free Constitution we should try and follow the same canons of democracy which have been followed in these great countries. This sort of Power, once given, is bound to be abused. When this power is given, it is often used even for small things. In fact even during this one year since our Ministries



[Prof. Shibban Lal Saksena]

have come to power, we got so many ordinances. I therefore think that if this sort of power is given, it will be the very negation of democracy. I think that we must not take this legacy of autocracy from the past slavery of our country into the free India which we are constructing today and we must therefore see that this thing is not given any place in our new Constitution. After all, if there is a grave emergency, our National Parliament will be ever ready to meet the situation. In Britain and in America they have been able to carry on their work without any such powers even during the last great war when their very existence was at stake. In fact, Mr. Churchill used to take the House of Commons into confidence publicly even in the darkest periods during the Great War. This raised the morale of the people tremendously and rallied their wholehearted support in a manner which no other method could have secured. Rule by ordinance has always been hateful to the people. I do not think that our Premiers and our great leaders are so much desirous of having this clause. I strongly feel that this is a step which negatives the entire Constitution. Besides, it is not proper to give such over-riding powers to a man who is not elected by adult suffrage as this will negative the democratic character of the entire Constitution. I, therefore, suggest that we should make no provision for this clause in our new Constitution.

**Sri M. Ananthasayanam Ayyangar:** Sir, the previous speaker evidently has taken this Section from the Government of India Act and misread it for some other clause coming later. There are two provisions there in the Government of India Act of 1935, which empower the Governor-General to promulgate ordinances. Firstly during the recess or interval between two sessions of the Legislature he does so on the advice of the Ministers and the Ministers take the responsibility for the same. He can do so also in his individual judgment. That means he can in certain circumstances over-ride the decision of the Ministers but he has however to consult them. The other occasion in which he can promulgate an ordinance in the discharge of his responsibilities specially imposed on him for the maintenance of law and order is in a grave emergency. The life of such an ordinance is only six months, and it can not be renewed except with the previous consent of His Majesty. My Honourable friend evidently is mistaking the later provision for the previous one. The previous one is during the recess, when a session of the Assembly is not there and it is not possible to convene a meeting of the Assembly to have an Act and in the place of an Act an ordinance is promulgated. My Honourable friend thinks that the President does it in his discretion. It is not stated in the draft that the President can promulgate an ordinance in his discretion. Then it means that the President promulgates an ordinance on the advice of his ministers. In further means this: that the ministers are responsible for this ordinance and the President is only something like a rubber-stamp giving effect, under his signature, to what the minister wants. The minister is responsible to the legislature. The question of the President not being elected by adult suffrage does not come in, because the ministers who take the responsibility for promulgating the ordinance, can be turned out of office. These objections would not hold good because, we are not giving any autocratic power to the President and the President of his own motion has absolutely no right to promulgate these ordinances. In the Statement of Objects and Reasons *i.e.*, in the small note appended to this clause in the Provincial Constitution itself, an instance is given that Lord Reading had promulgated an ordinance relating to Customs. It was absolutely necessary then. Many such occasions will arise and we cannot stultify ourselves by denying

this power to the Government. It is said that there can be no objection if in six months' time session of the Assembly could be convened. Soon after an Assembly session, the ministers are not likely to invoke the special power because if they had already a proposal in view they would have got an Act passed in the Session of the Assembly. If the emergency arises after the conclusion of the Assembly, they would invoke this power and six months thereafter, another session of the Assembly will normally come in. There need be no statutory provision that within six months after the ordinance comes into being or is promulgated, there must necessarily be a session of the Assembly. There will be many cases where for very small matters, which do not involve any principle, an ordinance has to be promulgated. Such matters need not necessitate invoking a session of the Assembly. Therefore, I submit there is no substance in the amendments proposed nor in the opposition to the clause as a whole by Mr. Shibban Lal Saksena.

**Mr. H. V. Kamath:** Mr. President, I submit, Sir, that there is a slight ambiguity in this Clause 17, which I would request Sir, Gopalaswami to clear in the course of his reply. In this clause we are treating the President and the Federal Parliament as two distinct entities, whereas in Clause 13 we have defined the Federal Parliament as the President *plus* the two Houses, that is, the Council of States and the House of the People. Personally I feel now, Sir, that the deletion of the words "National Assembly comprising" in Clause 13 was unfortunate because if we had retained them we could have defined the Houses jointly as a National Assembly and the Parliament would have been the President *plus* the National Assembly. Otherwise confusion is bound to arise throughout this Constitution as between the Federal Parliament, the President and the two Houses taken together.

**Mr. Naziruddin' Ahmad:** Mr. President, Sir, I wish to say a few words regarding the comment made by the Honourable Member who opposed the inclusion of Chapter III. In his speech he has expressed a sentiment which will be the common sentiment in this House. It is that we are going to have a free India; but with the other sentiment in connection with that amendment, I am not in sympathy. The Honourable Member seems to think that in a Free India there should be no such laws, but we are going to have democratic independence and democracy means rule of law. The Honourable Member suffered from the nightmare of the misuse of the Ordinances, of which we have had enough experience during the last war. I think that nightmare should go. The power will now be exercised by our elected men and our chosen representatives and they would no doubt act on the advice of responsible ministers. It is therefore reasonable to suppose that they would not abuse their powers. In these circumstances, I should suppose that they should have the power. But the question is really the proper application of the power or its misapplication. I think the existence of the power is a necessity so as to enable the Government to run on smoothly. What would happen when the legislatures are not in session and when there is a grave emergency? As to the kinds of emergency, there are an unlimited variety which may arise. A war or a mutiny or anything of that kind may arise. Food shortage and other things may arise. Then the legislature may not be in session. So, the President should have this power which may be employed usefully for the good of the community. In these circumstances, I should submit that the existence of the power is a great necessity and I have no reason to suppose that they would be misapplied: rather they would be applied for our benefit.

**The Honourable Sir N. Gopaldaswami Ayyangar:** I am very grateful to my Honourable friend Mr. Ananthasayanam Ayyangar for having disposed of so effectively both the amendments moved and the opposition that was offered to the passing of this clause. I have little to add to what he has said on these two aspects.

I would like to refer only to the point that was mentioned by Mr. Kamath, the use of the words "Federal Parliament" here. That is a matter which requires examination. An ordinance is issued by the President and if he lays it before the two Houses of the legislature, there are two contingencies of which you have got to take notice. If the ordinance relates to a matter which deserves to be provided for by permanent legislation, it has got to be approved by the Parliament as a whole including the President, because it will be legislation. But if it is a case of an ordinance which is only of temporary duration, or it is a case where the Houses of the legislature pass only a resolution disapproving of it and it ceases to have effect, then, perhaps it is not correct to use the word "Parliament". But all these aspects of the wording of this sub-clause (a) of Clause (2) of this paragraph, will be taken into full account when the text of the draft of the constitution comes to be settled.

**Mr. President:** I would now put Clause 17 to vote.

Clause 17 was adopted.

#### CLAUSE 18

**Mr. President:** We shall now take up the next clause.

**The Honourable Sir N. Gopaldaswami Ayyangar:** Sir, we pass on to Chapter IV, Federal Judicature. The clause which I have got to move relates to a very important part of the constitution. We have got two or three amendments and I hope you will agree that after I move this particular clause further proceedings in connection with the clause may be held over till tomorrow.

**Mr. President:** I was just going to suggest that you may formally move the clause, the amendments may also be formally moved, and we may discuss the clause and amendments tomorrow. If you can move the clause today, the amendments also could be moved.

**The Honourable Sir N. Gopaldaswami Ayyangar:** As a matter of fact, it may be that an agreed amendment will dispose of all other amendments.

**Mr. President:** You will move the clause first.

**The Honourable Sir N. Gopalaswami Ayyangar:** I beg to move Clause 18:

“18. There shall be a Supreme Court with the constitution powers and jurisdiction recommended by the *ad hoc* Committee on the Union Judiciary except that a judge of the Supreme Court shall be appointed by the President after consulting the Chief Justice and such other Judges of the Supreme Court as also such Judges of the High Courts as may be necessary for the purpose.”

I move.

**Mr. President:** I have got notice of two or three amendments. They could be formally moved today. That may save some time tomorrow.

(Messrs. Jaspat Roy Kapoor, B. Pocker Sahib Bahadur, K. T. M. Ahmed Ibrahim Sahib Bahadur, Rai Bahadur Syamanandan Sahaya and H.V. Pataskar did not move their amendments, Nos. 333 to 336.)

**Shri K. Santhanam:** I move:

“That for Clause 18, the following be substituted:

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

- (a) The additional jurisdiction to be vested in the Supreme Court according to para 10 shall be by Federal Law.
- (b) The appointment of the Chief Justice and the other Judges of the Supreme Court shall be by the President after consulting a joint standing committee of both Houses of the Federal Parliament consisting of six members from the House of the People and five members from the Council of States.
- (c) The salary and pensions of the Judges of the Federal Supreme Court should be fixed by Federal Law and they should not be altered in the case of any Judge to his disadvantage.’”

Sir, I have today given notice of a revised version to be substituted in the place of clause (b) and I shall request your permission to move it tomorrow.

**Shrimati G. Durgabai (Madras: General):** Mr. President, Sir, I beg to move the following amendment:

“That after Clause 18, the following new clause be inserted:

‘18-A. New High Courts may be established in any newly created province on an address being presented by the Legislature of that province to the Governor and on the same being approved by the President.’”

Sir, I will ask your permission for a debate on this, later.

**Mr. President:** It is an independent clause. We shall take it up separately.

It is just one o'clock. We shall adjourn now till 10 o'clock tomorrow.

**Sir Alladi Krishnaswami Ayyar:** I had given notice of an amendment this morning. May I read it now, Sir?

**Mr. President:** We have adjourned now. We shall take it up tomorrow.

The House then adjourned till Ten of the Clock, on Tuesday, the 29th July 1947.