Monday, 21st July, 1947

Volume IV

14-7-1947
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CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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CONSTITUENT ASSEMBLY OF INDIA

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CONSTITUENT ASSEMBLY OF INDIA

Monday, the 21*st 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.

PRESENTATION OF CREDENTIALS AND SIGNING OF THE REGISTER

Mr. President: I understand there are three members who have not yet signed the Register who are present to day. They may p1ease sign.

The following members presented their Credentials and signed the Register:

1. Dr. H. C. Mookerjee (West Bengal : General).
2. Mr. F. R. Anthony (C.P. & Berar : General).
3. Kumaraja Sir M. A. Muthiah Chettiyar (Madras : General).

CONDOLENCE OVER THE ASSASSINATION OF GEN. AUNG SAN AND HIS COLLEAGUES IN BURMA

Mr. President: Honourable Members received with the greatest grief the sad news of the tragic circumstances in which General Aung San and his colleagues lost their lives as a result of a dastardly outrage the day before yesterday. The news must have shocked Indians particularly because our relation with Burma have been of a very friendly character even after Burma was separated. General Aung San was one of those men who had brought Burma to the door of independence and that he should lose his life and that this colleagues should lose their lives at the hands of their own countrymen is tragic beyond words.

I do not know when the word will come to realise that violence, and violence particularly of this type can never solve any problem of the world. If this outrage is any indication of a deep-laid plot, Burma is in, I would fear, for very difficult times. But we have hopes that the Government there which has been brought into power with the overwhelming support of the people will be able to control the situation and that the people of Burma will be able to enjoy the fruits of that independence which those who have lost their lives have just won for her.

I hope the House will permit me to convey our sence of sorrow and our condolences to the people of Burma, to the members of the Government there as also to the members of the bereaved families. I hope Honourable members will express their assent by standing in their places.

The Assembly assented, the members standing in their places.

Shri Gokulbhai D. Bhatt (Eastern Rajputana States) :

[Mr. President, with your permission, I would like to ask one or two questions. For how many days more will this Session of the Assembly continue? Are we going to meet again in August? I wish to know it in order to facilitate my programme.]

Mr. President: *[I hope that the Assembly will conclude its session within this month, as we have before us one more report of another Committee to consider after we finish the report of this Committee. When the Assembly finishes discussions over that report, the great task before us, requiring a major portion of our time would have finished. Besides that, one or two resolutions are also expected. I hope they will not take a long time. Hence I think that the business of this sitting would be finished by the end of this month. It is possible that the members may have to come again on the 15th August.]*

REPORT ON THE PRINCIPLES OF A MODEL PROVINCIAL CONSTITUTION—*contd.*

CLAUSE 22

Mr. President: We shall now take up the discussion of the clause that we were discussing that day. The amendments have been moved and the motion as well as the amendments are open to discussion.

I would like to know if there is any other amendment of which notice has been given, which had not been moved. My own impression is that all amendments have been moved.

Mr Aney, you wanted to speak on this?

Mr. M.S. Aney (Deccan States): Mr. President, Sir, I only wanted to make one observation with regard to the second amendment moved by Mr. Santhanam to Clause 22 that it was, in my opinion a superfluous amendment. He wants to make sure that any rules that may be made will not infringe the primary principle which has been already provided for *viz.* adult franchise, but I believe it is a well known principle that under the rule making powers those who have to frame the rule have to see that nothing is introduced into the rules which is inconsistent with the principles already embodied in the Statute itself. In view of that and in view of the fact that adult suffrage has already been provided for by a distinct provision in the Statute the second amendment which he has proposed appears to me to be unnecessary.

Shri K. Santhanam (Madras: General): With regard to the objection raised by Sir N. Gopalaswamy Ayyangar, I have given notice of an amendment which may also be taken up with this. It is in the new supplementary list. I would like to state that no provision has been made for the first election. Unless something is made, that clause is difficult to apply and so I have tabled an amendment as follows:

> "That the following be inserted at the beginning of Clause 22:
>
> 'For the first election to the Provincial Legislature under this Constitution, the constituencies, qualifications of voters and other particulars shall be such as may be prescribed, in the Scheduled to this Constitution,' "

Then the clause will run as given and then my amendments will come. I move this amendment as I do not think there is any point to be cleared about it.

Mr. President: Does anyone wish to speak about the clause or any of the amendments that have been moved?

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*[English translation of Hindustani Speech begins.
]* English translation of Hindustani Speech ends.
*[English translation of Hindustani Speech begins.
]* English translation of Hindustani Speech ends.

I will put the amendments to vote.

This is Mr. Santhanam's amendment.

"That the following be inserted at the beginning of Clause 22:

'For the first election to the Provincial Legislature under this Constitution, the constituencies, qualification of voters and other particulars shall be such as may be prescribed, in the Schedule to this Constitution'."

The Honourable Sardar Vallabhbhai J. Patel (Bombay: General): I accept Mr. Santhanam's as well as Seth Govind Das's amendment.

Mr. President: I put Mr. Santhanam's amendment to vote.

The amendment was adopted.

Mr. President: Mr. Santhanam's second amendment is as follows:

"That in Clause 22 after the words 'from time to time' the following be inserted:

'in accordance, with the procedure for amendment the Provincial Constitution".

The amendment was adopted.

Mr. President: There is another amendment by Mr. Santhanam as follows :

"That in item (b) of Clause 22, for the words 'the qualifications for the franchise' the following be substituted:

'Limitations to adult franchise on grounds of non resident or personal disabilities not based on birth, race, religion or community'."

The amendment was adopted.

Mr President: There is another amendment moved by Mr. Munshi as follows:

"That the second proviso to Clause 22 be deleted."

The motion was adopted.

Mr. President: There is another amendment moved by Seth Govind Das as follows:

"That after proviso (2) in Clause 22, the following new proviso be added:

'(3) that all provisions under Clause 22(a) to (i) will be made on the principles and in conformity with the instructions laid down in the schedule annexed hereto as to maintain uniformity in these matters throughout the Indian Union'."

The amendment was adopted.

Mr. President: Now I put the clause, as amended to vote.

Clause 22, as amended, was adopted.

CLAUSE 23

The Honourable Sardar Vallabhbhai J. Patel: Sir, I move Clause 23:

"(1) If at any time when the Provincial Legislature is not in session, the Governor 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.

(2) An ordinance promulgated under this clause shall have the force and effect as an Act of the Provincial Legislature assented to by the Governor but every such ordinance—

(a) shall be laid before the Provincial Legislature and shall cease to operate at the expiration of six weeks from the reassembly of the Provincial Legislature, or if before the expiration of that period resolutions disapproving it are passed by the Legislature, upon the passing of the second of those resolutions; and

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

(3) If and in so far as an ordinance under this clause makes any provision which the Provincial Legislature would not under this Constitution be competent to enact, it shall be void."

Ordinance making power has been subjected to much criticism; but by long experience it has been found that it is necessary to have such provision in the case of an emergency when the Legislature is not sitting and there is not enough time to call the Legislature and there is immediate necessity of passing an urgent legislation.

I do not think there are many amendments to this clause. I move this proposition for the acceptance of the House.

(Messrs. Ajit Prasad Jain, H. V. Pataskar, R. K. Sidhwa, Shibbanlal Saksena and M. Ananthasayanam Ayyangar did not move their amendments.)

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, I beg to move that the following new clause be added after Clause 23:

"24. All matters incidental to or consequential upon the Clauses above shall be deemed to be part of, and included in the said clauses."

Sir, my object in moving this amendment is to remove all technical difficulties that may arise at the time of the drafting of the final bill. We have accepted in the House a large number of amendments to the original Report and it is just possible that there may be some gap or omission here and there, met with at the time of the final drafting. I therefore propose this amendment so as to remove any such technical difficulties.

Mr. President: Mr. Naziruddin, I think yours is not an amendment but the addition of a new clause. We had, I think, better dispose of Clause 23, and then go on to this new clause.

No amendment has been moved to this clause, Clause 23. If any member wishes to speak about it, he can do so now.

(No member rose to speak.)

I shall now put the motion:

"23. (1) If at any time when the Provincial Legislature is not in session, the Governor 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.

(2) An ordinance promulgated under this clause shall have the same force and effect as an Act of this provincial Legislature assented to by the Governor, but every such ordinance—

(a) shall be laid before the Provincial Legislature and shall case to operate at the expiration of six weeks from the reassemble of the Provincial Legislature, or, if before the expiration of that period resolution disapproving it are passed by the Legislature, upon the passing of the second of those resolution; and

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

(3) If and in so far as an ordinance under this clause makes any provision which the Provincial Legislature would not under this Constitution be competent to enact, it shall be void."

The motion was adopted.

Mr. President: Mr. Naziruddin Ahmad will please move his clause.

Mr. Naziruddin Ahmad: Sir, I beg to move that the following new clause be added after Clause 23:

"24. All matters incidental to or consequential upon the clauses above shall be deemed to be part of, and included in, the said clauses."

Sir, I submit that this clause would be necessary to remove technical difficulties at the time of, the drafting. We have introduced some new amendments in this House, without perhaps much notice. It is, therefore, just possible that there may be gaps here and there, I mean, unintentional gaps or technical difficulties. So at the time of drafting a point may arise that particular things *i.e.* things incidental to certain amendments adopted here or consequential upon those amendments—are not meant to be included in the Report. It is for this reason that I have proposed this new clause. I do not know of any gaps, apparent gaps, just now, but all the same I have brought forward this clause so that if there is any gap or omission, then this clause may be helpful to the draftsmen. With these few words I submit it for the acceptance of this House.

Mr. President: A new clause, Clause 24, has been proposed to be added here. Personally I have not been able to quite understand the effect of this additional clause. If any member wishes to speak about it. I shall be obliged if he would enlighten me on it.

Shri M. Ananthasayanam Ayyangar (Madras : General): Sir, I do not think there is any need for such a new clause as this because we are here only approving the general principles. Things ancillary, incidental, supplementary, consequential, etc., will naturally have to be added when the final drafting is done. The new clause now proposed is vague. With it, it is not enough to meet the situation, without it we are none the worse of. In any case it need not be considered or voted upon now.

Mr. President: As there is no other speaker, I shall put the motion to House.

The motion is that the following new clause be added after Clause 23.

"24 All matters incidental to or consequential upon the clauses above shall be deemed the part of, and included in, the said clauses."

The motion was negatived.

Mr. President: There is notice or another additional clause by Mr. Santhanam. Will Mr. Santhanam please move it?

Shri K. Santhanam: Sir, I beg to move that after Clause 23 the following new clause be inserted:—

"24 The Governor of a province in which the legislature consists of a single chamber shall have the right to return at his discretion a Bill passed by the legislature for reconsideration and may suggest amendments. If the Bill is passed again by the legislature with or without, amendments by an absolute majority he shall assent to it."

This is an amendment of some substance. As things stand in the draft of the model constitution, if a legislature passes a law by a santch vote or by a very narrow majority it will have to become law immediately because there is no power of veto or any other power vested in the Governor. Sir, I myself do not want any power of veto for the Governor; I want full autonomy and full responsible government in every province. But I want to give the Governor the power to send a Bill passed by the provincial Assembly for reconsideration. If after reconsideration the Assembly passes it by an absolute majority he will have no power of veto but will have to give to his assent to it.

Sir, I have limited this power only to those provinces which will have unicameral legislatures because where there are two chambers the revisory function will belong to the Upper House. I have also vested this power in the Governor's discretion. Obviously a ministry which rushes a Bill through by a narrow majority will not care to advise reconsiderations and so it should be a power in the Governor's discretion.

Sir, I move.

Pandit Lakshmi Kanta Maitra: (West Bengal: General): Sir, I am afraid this amendment cuts at the very root of the democratic principle which forms the basis of this constitution. What after all is Mr. Santhanam's point? It is that if in any province with a unicameral legislature a Bill is passed by a narrow majority the Governor should be invested with additional powers—which are to be exercised by him in his discretion to make suggestion to the legislature to reconsider the whole situation and then come to a decision. Now I ask the House to consider the result of such a procedure. In my opinion the inevitable result would be that the Governor would be antagonised and would straight away come into conflict with the popular ministry which would be functioning. I do not see any necessity for it; on the other hand if any measure has been passed in inordinate haste and without due consideration and discrimination, the legislature surely is not debarred from repealing it or amending it at subsequent sessions, if it is not the product of mature deliberation. So I feel that to invest the Governor with powers like this would be directly to trench upon the independence and responsibility of the legislature. It will unnecessarily bring the Governor into conflict with the ministry and I feel that the motion should not be supported.

Mr. N. V. Gadgil (Bombay: General): Sir, I desire to make a suggestion which need not be incorporated here and now but may be considered as the proper stage later on. I suggest that there should be a time-limit within which the Governor should send a Bill back with or without amendments, failing which it should be taken automatically that he has assented to the Bill. The American constitution contains this kind of provision and it should be embodied here.

Pandit Lakshmi Kanta Maitra: While laying down a time-limit, does Mr. Gadgil accept the principle that the Governor will be in a position to reconsider the whole situation over the head of the legislature?

Shri M. Ananthasayanam Ayyangar: Sir, I consider this a very wholesome provision. I do not know why my friend Pandit Maitra has any doubt as to the intention of Mr. Gadgil in supporting this amendment. He accepts the principle and then says that there should be a time-limit. In the American constitution a time-limit of ten days is fixed. There must be a period within which the Governor must consider the matter and send it back for reconsideration of the House. After all a sufficient number of members might not have been present, there may be important matters involved relating to minorities and other matters where consideration at some greater length should have been bestowed on a Bill instead of its being through. The Governor would have to be watchful at every stage; it is not as if he would actually try to interfere at every stage with a popular ministry. He will be on his guard; he will be the President of the Council of Ministers from time to time and will exercise a wholesome influance. If inspite of all this a situation suddenly arises where a particular section wants to rush a Bill through let him put his check upon that and send it for reconsideration of the legislature. There are similar provision in the Government of India Act. I can assure my friend Pandit Maitra that a popular Governor would not try to interfere except in very special cases. I support the amendment.

Mr. Tajamul Husain (Bihar: Muslim): Sir, I rise to support the amendment. What would be the position if a Bill is sent for the assent of the Governor and he is not satisfied with the provisions of the Bill? Ordinarily a Governor who is selected on adult franchise will not interfere with any measure which is passed by the legislature. But in case he is not satisfied with the Bill is he to sign it against his conscience? Or is he to send it back to the House with his amendments or make a total rejection? I think under the English constitution if a Bill passes through the House

of Commons it goes to the House of Lords and is then sent to the King for his assent. In practice the King always assents though he has the right to reject a Bill in which case it goes back to the Houses of Parliament. If it passes again without any amendments and is again sent to the King for his assent he must sign it or he must abdicate. Similarly if the Governor is given power to refuse his consent or if he sends the Bill with his amendments it is for the provincial legislature to reconsider the Bill in the light of the Governor's suggestions. If they pass the Bill again in its original form the Governor must sign it or he must got out. Therefore I support the amendment that a chance must be given to the Governor and that he should not act merely as a figurehead.

Mr. Ramnarayan Singh (Bihar: General): Sir, I strongly support the amendment. We have provided in the constitution for an elected Governor and so I do not see why people should be so afraid of him that they do not want to give him any powers. From time to time it is necessary that the Governor should take the initiative and there will be no harm if any legislation is reconsidered. I appeal to the House to give some power to the Governor so that he may be of some use to society, otherwise it is better to get rid of the Governor altogether Sir, I think this amendment should be accepted by the House.

The Honourable Mr. Hussain Imam (Bihar: General): Mr. President, I intervene in this debate in order that the practice might be established, when things of this nature are being discussed of advising the Constituent Assembly on the practice all the world over. I regret, Sir, at this moment many of my colleagues have not before them Constitutions of the world. They have also probably not read the exhaustive notes which have been circulated by the staff of the Constituent Assembly at the instance of the Constitutional Adviser.

The practice in U.S.A., to give only one instances, is that the President has the power, in spite of there being dual chambers—the Senate and the House of Representatives to veto a Bill but that the veto can be overridden if a majority of two-thirds of both Houses reject it. In addition to that he has another veto which is a pocket veto, by means of which he can disallow a Bill if it is' passed within ten days of the sittings of the House. There are any number of instances to indicate what the world is doing. It will be very useful if the practice could be established of the Honourable the President getting the Constitutional Adviser to indicate, on such controversial issues, what the practice in other parts of the world is. No doubt the Constitutional Adviser has issued a book to us. It will be very useful to us. Still there is room for more information on world practice.

I think Mr. Santhanam's amendment is very essential. He has urged in this amendment that it will have effect only in those provinces in which the legislature consists of a single chamber. The Mover thinks that where there is a second chamber, it will act as a brake on the Lower House. But we know, Sir, that there is need for further clarification where, if there is any difference between the two Houses there are different methods of tackling it in different Countries. In regard to Money Bills the practice in some places is that the Second Chamber is made *hors de combat*. It has no power. In regard to other Bills, in some of the Constitutions, the Second Chamber can vote finally, In other Constitutions, they have to sit together and come to a decision joinly, the Second Chamber's votes being usually overridden by the majorities in the Lower House. But what I was saying was that it is wrong on our part still to dream that we will be having Governors appointed by an outside authority. In future, the Governors will not be there to serve the cause of the powers-that-be. The Governor will be our man elected by adult franchise. It. is therefore necessary that you must give him full trust and confidence. If you place your confidence in him and if you provide, as

[Mr. Hussain Imam]

suggested by Mr. Santhanam these checks and balances, you will arrive at a happy mean in which there will be one House ready to set right matters if the other goes wrong. This is the only method by which we can avoid pitfalls. I support the amendment.

Kumararaja Sir M. A. Muthiah Chettiyar (Madras : General): Sir I am very glad that Mr. Santhanam has moved this amendment and that there is the prospect of the House accepting it. But my happiness is mitigated by the fact that the amendment is restricted in its application to Provinces where there is no second chamber.

Sir, the experience that we have of second chambers where they exist does not warrant the belief that they are a sufficient check against hasty legislation. In the last few years the Lower House has rushed through legislation with such haste that many mistakes have crept in and there have been many occasions when the leaders of the Lower House have requested the members of the Upper House to correct and send back the Bill to the Lower House. All this will be avoided if the Lower 'House is given a chance to reconsider the matter.

There are many reasons necessitating this opportunity or reconsideration. Sir on many occasions all the Standing Orders are suspended and legislative measures published in the Gazette only the previous evening, are carried through the Legislature the next morning in the twinkling of an eye. They say that an emergency has arisen and that if the legislature does not pass the measure before it adjourns, the Governor would have to issue an Ordinance.

For these reasons I do suggest that we should go a step further and remove from the amendment the reference to single chambers so that this check may be there even in Provinces where there are two chambers.

With regard to the possible misuse of the power by the Governor I am glad that my hon. friend Mr. Hussain Imam has pointed that the Governor is not going to be a stranger. He is going to be a provincial man or an Indian from another province. That being so, we may be expected to guage public opinion. If in his opinion he feels that the legislature is rushing through a measure against public opinion, he may be expected to send back the measure for reconsideration. There may be occasions when legislators may not have time to study any piece of legislation brought before them and they will be only glad to get a chance to look at it once again Press and public opinion in the country would play a great part in shaping the views of the Governor. If the governor acts wrongly he will be told so by the Ministry and by public opinion. I do not think the Governor will misuse the power to send back legislative measures. I hope that the Mover and the leaders of the parties will find it possible to remove this reference to single chamber and provide for this check even in places where there are two chambers.

B Pocker Sahib Bahadur (Madras: Muslim): I have great pleasure in supporting this amendment. At the same time I must express my dissent from the view of the previous speaker that this should be extended even to cases where there is a bicameral legislature. The Upper House is a sufficient check against hasty legislation. Therefore, in the Provinces in which there is an Upper House it is not necessary that this power should be given to the Governor. I support the amendment.

Mr. Naziruddin Ahmad: I beg to support the amendment. Sir, in the speeches delivered here in this connection, one aspect of the thing has not been mentioned. It is that in some cases legislation may be *ultra vires* irregular or illegal in some respects. In such cases, the Minister who has sponsored such legislation may himself desire to reconsider the matter. A provision like this would give him an opportunity to reconsider his attitude when he finds that public opinion is against the measure. It is inconceivable that a Governor, under the new Constitution, would act in an improper manner. In the circumstances power like this may be very

much desired by the Ministers themselves. I believe that a power like this exists in the Government of India Act of 1935 much of which has been copied in this Report. The Government of India Act of 1935 has now been admitted to be a model legislation. As I have already submitted the Governor should be given this power in provinces where there is no second chamber and he may be expected to act in a beneficial manner.

Mahboob Ali Baig Sahib Bahadur (Madras : Muslim). W. President, the other day we accepted a clause empowering provinces to choose whether they would have a second chamber or not, implying thereby that this House would accept a second chamber in the case of those provinces who choose to have it. How could we deny in these circumstances the same restraining influence to provinces which choose to have only one chamber? Either you must allow provinces to have second chambers or you must allow that restraining influence to the Governors for remitting bills for reconsideration in the case of provinces which select only one chamber. Sir in the case of provinces which elect to have only one chamber, the Governor must have this restraining influence to check hasty legislation, and we cannot deny to such provinces a provision of this kind. This is consistent, logical and—necessary. Therefore I support the amendment.

K. T. M. Ahmed Ibrahim Sahib Bahadur (Madras : Muslim): Mr. President, Sir. it, is absolutely necessary for the Governor to have this power to prevent hasty legislation. I submit that his power is not inconsistent with democratic principles. In the Union Constitution, there is a provision a the effect that the President should have the power of returning bill which have been passed by the National Assembly for reconsideration within a period of six months. What the Union Constitution seeks to give to the President of the Nation must in justice be given to the Governors of provinces. There is nothing undemocratic about it.

Further., Sir, the Governors of provinces are invested with very great powers, and the Provincial Constitution Committee says that the Governors will not abuse those powers as they are elected Governors. Then, Sir, it is obvious that if the President of the Union who is elected by a limited franchise is given power to send back bills to the National, Assembly for reconsideration, it is in the fitness of things that the Governors who are elected on adult franchise should be given the same power. I am therefore glad to support the amendment moved by Mr. Santhanam.

The Honourable Sardar Vallabhbhai Patel: Sir, I am prepared to accept this amendment of Mr. Santhanam with one change. I suggest that the last four words "by an absolute majority" should be dropped.

It was suggested that this should also cover the provinces where there are two chambers. I think it is not necessary because, where there are two chambers, if they differ, the case will come for reconsideration at a joint session. Therefore it is not necessary.

Mr. President: Mr. Santhanam, do you wish to say anything in reply?

Shri K. Santhanam: I will just say that I accept the suggestion made by Sardar Patel, but I wish make one remark. When a bill is sent back for reconsideration, both the parties will marshal their forces, and unless the ministry has got 51 per cent., it is likely to be defeated. It does not matter whether the words "by an absolute majority" are there or not. The effect will be just the same.

Pandit Lakshmi Kanta Maitra: I do not know whether the amendment moved by Mr. Santhanam has been accepted by the House or not. It is not clear to me—I think it is not clear to many members of the House as to what the decision of the House is with regard to the words "by an absolute majority".

Mr. President: What are you speaking about, Mr. Maitra?

Pandit Lakshmi Kanta Maitra: I want to know whether you are going to put the vote of the House the deletion of the words "by an absolute majority".

The Honourable Sardar Vallabhbhai Patel: Mr. Santhanam has accepted the amendment.

Mr. President: How does it stand now?

The Honourable Sardar Vallabhbhai Patel: Without any reference to the remarks made by Mr. Santhanam, I accept his amendment but with the deletion of the words "by an absolute majority".

Dr. B. R. Ambedkar (Bombay : General): The sentence will read now, "If the Bill is passed again by the legislature with or without amendments, he shall assant to it".

Mr. President: Then I put Clause 24 to vote. The resolution as now amended, with those four words "by an absolute majority" omitted, will now read:

"The Governor of a Province in which the legislature consists of single chamber shall have the right to return at his discretion a Bill passed by the legislature for reconsideration and may suggest amendments. If the Bill is passed again by the legislature with or without amendments, he shall assent to it."

The motion was adopted.

Part II—The Provincial Judiciary

Mr. President: We shall go to Part II—The Provincial Judiciary.

The Honourable Sardar Vallabhbhai J. Patel: Sir, I move:

"1. The provisions of the Government of India Act, 1935, relating to the High Court should be adopted *mutatis mutandis*; but judges should be appointed by the President of the Federation in consultation with the Chief Justice of the Supreme Court, the Governor of the Province and the Chief Justice of the High Court of the Province (except when the Chief Justice of the High Court himself is to be appointed).

2. The judges of the High Court shall receive such emoluments and allowances as may be determined by Act of the Provincial Legislature and until then such as are prescribed in Schedule.....

3. The emoluments and allowances of the judges shall not be diminished during their term of office."

This clause proposes to incorporate the provisions of the 1935 Act regarding High Courts, but regarding the appointment of the Judges it provides that the appointment shall be made by the President of the Federal Legislature in consultation with the Chief Justice of the Supreme Court and the, Governor of the Province. With so many checks and counter checks these appointments place the High Court Judges beyond any influence of the parties or any other influences and beyond any suspicion or doubt of such a nature. There is thus enough guarantee provided for the independence of the Judiciary. The other two clauses are purely consequential relating to pay and allowances for which I hope there are no amendments. I therefore move the proposition for the acceptance of the House.

(Dr. Subbarayan, Mr. Mallayya, Mr. Ramalingam, Chettiar and Seth Govind Das did not move their amendments.)

Mr. President: Then there is no amendment to this clause. Does any one wish to say anything about this clause?

Sir Alladi Krishnaswami Ayyar: (Madras : General): Mine is also an amendment.

Mr. President: You may move it at this stage.

Sir Alladi Krishnaswami Ayyar: With your leave I propose to move the following amendment to Clause I in II.

At the end of Clause I in Part II, *add* the following:

"Provided that—

(a) all the High Courts in the Union of India shall have the right to issue prerogative writs or any substituted remedies therefor throughout the area subject to there appellate jurisdiction;

(b) the restriction as to jurisdiction in revenue matters referred to in section 226 of the Government of India Act, 1935, shall no longer apply to the High Courts; and

(c) in addition to the powers enumerated in section 224 of the Government of India Act, 1935 the High Courts shall have powers of superintendence over subordinate courts as under section 107 of the Government of India Act, 1915."

The object of these amendments is to remove certain patent and glaring defects in the jurisdiction of the High Court to get rid of anomalies and to provide an adequate and effective machinery for the enforcement of fundamental rights. Clause (a) of the amendment deals with prerogative writs or any substituted remedies therefor. The reference to substituted remedies is to enable a simple remedy by application for writs in accordance with the procedure obtaining in England under recent enactments. Under the law as it stands the High Courts of Calcutta, Bombay and Madras have the right to issue prerogative writs within the limits of their ordinary original jurisdiction. The remedy by application was substituted for the Writ of Mandamus by the Specific Relief Act, but the remedy is confined to the presidency towns. There is no conceivable reason why a citizen outside the limits of the presidency town should be left to the dilatory remedy of an ordinary suit while a remedy by application to the High Court is available to a resident of the presidency town. In regard to the prerogative writ of *habeas corpus*, the Criminal Procedure Code has enabled application of substituted remedy for *habeas corpus* being available throughout the appellate jurisdiction of the High Court. The Privy Council has recently held that the remedy by way of *Certiorari* enabling the High Court to remedy proceedings of judicial and quasi-judicial bodies acting in excess of jurisdiction is available within the presidency town. Clause (a) when passed will enable all the High Courts in the Union of India to exercise the jurisdiction in regard to these matters throughout the area subject to their appellate jurisdiction. The Clause also will provide an effective remedy for the fundamental rights guaranteed under the constitution. Clause (b) is intended to remedy an anomaly in the jurisdiction of the High Court. The anomaly goes back to the days of Warren Hastings. Under the law as it stands there is no bar even to a district munsiff entertaining a suit which involved a right to revenue, but the High Courts are debarred from entertaining such suits. The other day the Federal Court while upholding the right of a litigant in every respect ruled that the suit filed in the High Court was liable to be dismissed on the technical ground based on section 226 of the Government of India Act. The need for removing this bar on the jurisdiction of the High Court is universally felt by the profession and has been emphasised in several statements of the High Courts in India. The last clause is intended to remedy a defect introduced by the Act of 1935 under which the High Courts were deprived of the powers of superintendence in certain respects over the subordinate courts. This amendment I venture to state, has the universal support of the profession and I commend it your acceptance.

Shrimati G. Durgabai (Madras : General): Mr. President, Sir, I wish to make it clear at the very outset that I stand here to support Clause 1 in Part II relating to the Provincial Judiciary. Sir, I wish to confine myself to that portion of the clause which lays down the procedure for the

[Shrimati G. Durgabai]

appointment of judges to the Provincial Courts. The clause runs on the following lines:

". ....the judges should be appointed by the President of the Federation in consultation with the Chief Justice of the Supreme Court, the Governor of the Province and the Chief Justice of the High Court of the Province (except when the Chief Justice of the High Court himself is to be appointed)."

Sir, we see thus by the manner provided in this clause we introduce some kind of intervention on the part of an external authority in matters relating to the provinces and the Provincial Governments. I think this kind of intervention and this kind of procedure laid down providing for the necessity for an external authority is bound to provoke in the minds of some people at least the fear that this is a sort of encroachment over the jurisdiction of the Provincial Government as opposed to the principles of provincial autonomy. But, Sir, I confess myself was holding this view for some time, whether it would not be desirable to leave this matter to the discretion of the Provincial Governments, namely the Governor acting on the advice of his Ministers. But on a careful consideration of the matter I find that the manner as suggested by the authors of this clause has greater advantages over the other. Hereafter in the new set-up conditions are bound to be different and the High Courts have got to take upon themselves greater and heavier tasks and onerous responsibilities. They are the repositories of the Constitution; they have got to interpret the constitution. They are the guardians of the fundamental rights in the Constitution. Every common man must look to these courts for fair treatment and justice. They have got to see that their rights are safeguarded and they are in safe custody. Therefore if we have got to achieve this, we have got to see to the successful working of these High Courts and this depends mostly upon the quality of the judiciary and the manner in which it is composed. The independence of the judiciary is a thing which has to be decided and this independence to a large extent depends on the way in which these judges are to be appointed. They should not be made to feel that they owe their appointment either to this person or that person or to this party or to that party. They have to feel that they are independent. It is only in that case that we get efficiency of administration of justice. It is with a view to secure this kind of independence that some sort of check is necessary and the authors of the clause have provided for this check by bringing in some external authority to have something to do with the appointments relating to the Provincial courts. We may fell why the Chief Justice of the Supreme Court also is brought into this picture but in the interests of the purity of administration of justice the Supreme Court has a great part to play hereafter. It is the highest of the High Courts of India and it will have a general advisory jurisdiction and a general appellate jurisdiction which is similar to that now exercised by the Privy Council relating to Indian units. Therefore, it is to review the work of all High Courts and also exercise the powers of general superintendence, direction and control in all matters relating to the provincial judiciary. Several matters of the High Courts have got to come before this Court by way of revision, reference and appeal. Therefore, the Chief Justice of the Supreme Court has got a great deal to do with these High Courts and not only that, the Supreme Court in itself has got to be composed from among the judges of the High Courts as we see. Therefore, considering all these matters I feel that it is highly necessary that the Chief Justice of the Supreme Court is consulted by the President of the Federation in making these appointments to the provincial courts. Of course, this need not really leave a fear in our minds that the freedom of the provinces is curtailed to a large extent but this sort of check will be used only on rare occasions and generally the recommendations made by the Governor

on the advice of his Ministers and in consultation with the Chief Justice of the High Courts will be accepted so long as they are right and also their choice is bound to be good generally, except in very rare instances when the intervention of the Federal Authority is to be brought.

There is another point to be taken into consideration, namely this, that we need not feel that we are doing something very unusual. There is no one uniform principle in all federal constitutions of the world that this power of appointment to the judges of the High Courts of the units should always rest with only the Provincial Governments. It is not necessary. We have got an instance provided to us in the Canadian constitution where the power of appointment rests with the Governor-General who will make the appointment. Therefore we can accept this principle without any fear or favour and adopt it in our system.

With these few observations, Sir, I support this clause and I commend it for the acceptance of the House.

B. Pocker Sahib Bahadur: Mr. President, Sir, I have great pleasure in supporting the amendment moved by Sir Alladi Krishnaswami Ayyar. Every one of those clauses is absolutely necessary having regard to the difficulties which people have been experiencing as a result of the Government of India Act of 1935 and also the recent ruling of the Privy Council regarding *certiorari*. Until the recent ruling, we were having this remedy by way of unit of *certiorari* as regards the mofussil also, but as a result of the Privy Council ruling, we are restricted as regards that remedy only to Presidency towns. It is absolutely necessary that such a remedy must be available to the people of the mofussil also.

As regards the power of superintendence to be vested in the High Courts we were having the remedy before the passing of the Government of India Act of 1935, but all such remedies were excluded by the new provisions of the 1935 Act, all the litigant public have been feeling very much about the absense of the right of superintendence in the High Courts as regards proceedings in the mofussil courts. The result is that people are now restricted to remedy under Section 15 of the C.P.C. which is inadequate and does not cover all cases in which remedy is necessary. Therefore, Sir, it is necessary that these matters should be made very clear, particularly for the reason that hereafter we may not be able to rely on English practice and on precedents in England.

I do not know, how far I am right; but I presume for the time being that English precedents and practice may not be available to us as authority hereafter. In view of these circumstances, it is absolutely necessary that these clauses should find a place in the measure that we are passing.

I have only to make another observation in connection with this clause. I have given notice of an amendment in which I suggested that instead of the Chief Justice of the High Court of the Province concerned, it must be the High Court itself that should be consulted. Instead of the consultation being confined to the Chief Justice, the consultation must be with the High Court. My amendment being an amendment to another amendment given notice of by Dr. Subbarayan as Dr. Subbarayan has not moved that amendment, my amendment fails. However, I would like to make this remark for the Drafting Committee that it is very desirable that the consultation should not be restricted to the Chief Justice of the High Court, but should be with the High Court as such, so that the matter may be considered by all the Judges of the High Court at the Judges Meeting, and the result might be communicated to the authorities concerned.

With these observations, I support the amendment proposed by Sir Alladi Krishnaswami Ayyar.

The Honourable Mr. Jaipal Singh (Bihar: General): Mr. President, I support Part II, Clauses 1 to 3. At the same time, I would like to have

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some information from the Honourable Mover as to whether any discussion has taken place and when we shall know anything about any result of the agitation that has been carried on in this country by all parties in regard to the separation of the judiciary from the executive, whether we are going to get this matter considered in the report Pandit Jawaharlal Nehru will submit on behalf of the Union Powers Committee. I only want to ask this question and I hope the Honourable Mover will give us some information on this point.

Rai Bahadur Syamanandan Sahaya (Bihar: General): Sir, I wanted to draw the attention of the Mover and the House to Clause 3 of Part II in which it is laid down that the "emoluments and allowances of the Judges shall not be diminished during their term of office". I was thinking, Sir, that the term "diminished" would not meet the requirements and that this should be replaced by the word, "varied". I am sorry I have not tabled an amendment, because there were other amendments which I thought would be moved. In any case, the matter is of importance and I therefore wanted to draw the attention of the Mover to this. Perhaps it may be rectified at the stage of drafting. The reasons and the principle which I suppose guided the members of the Provincial Constitution Committee to lay down that the emoluments will not be diminished during their term of office will be precisely the same as in the case of increasing their salary also. You would not naturally want the judiciary to be constantly looking up either for increasing their salary, or be under the apprehension that there will be a decrease in their salary. In these circumstances, I think it will be desirable that the word "diminished" should be changed by the word "varied" with the approval of the mover.

I have not formally moved an amendment. But I think the matter is of sufficient importance to be brought to the notice of the House.

Shri M. Ananthasayanam Ayyangar: I find, Sir, with all respect, that this amendment may bring in complications for this reason. I agree with Sir Alladi Krishnaswami Ayyar that the powers of the High Court have to be enlarged. There are a number of restrictions placed under the Government of India Act now on the powers of the High Court regarding revenue jurisdiction. This is No. 1 in his amendment by which he wants to correct this Act. In his amendment he wants to say that the High Court shall exercise jurisdiction over all revenue matters also without any of the restrictions or limitations contained in the Government of India Act. One of them is under section 226 which runs as follows:

> "Until otherwise provided by Act of the Appropriate legislature no High Court shall have any original jurisdiction in any matter concerning the revenue or concerning any act ordered or done in the collection thereof according to the usage and practice of the country....."

Does he want by the Constitution Act to confer original jurisdiction in revenue matters also or in the matter of collection? These have been exempted. If such a power should be given here and incorporated in the Constitution Act itself, any change that may be necessitated by experience will have to be made by way of an amendment to the Constitution Act. There is absolutely no objection to the legislature of the High Court removing the restrictions.

So far the jurisdiction of the High Court in the matter of writs is concerned, they are subject now to any Order in Council that may have been passed by the Government, under section 223, Orders in Council by His Majesty the King or otherwise. Some of the writs may be obsolete, some of them may be necessary or may be found obsolete later on. Should we go into the details? In case there is need to modify this, there will have to be two-thirds majority in both the Houses and all the processes and procedure for modifying the constitution will have to be gone through as in other substantial matters. We can easily say the provincial legislature shall be entitled to enlarge the jurisdiction of the High Court or

place a restriction upon that. I do not feel that any of these matters need to be incorporated in a Constitution Act like this.

Again Clause (c) says that in addition to the powers enumerated in section 224 of the Government of India Act, 1935, the High Courts shall have powers of superintendence over subordinate courts as under section 107 of the Government of India Act. I do not deny that the High Court's powers may be enlarged in the manner suggested by Sir Alladi in his amendment. But the local legislature is competent to give not only those powers, but additional powers also not contemplated in section 107 of the Government of India Act. Why should we restrict to this or that? Evidently, Sir Alladi finds that the draft constitution placed before the House which we are discussing, seeks to embody all the provisions that exist in the present Government of India Act. I agree that we ought not to bodily incorporate those provisions whether they are good or bad. The framers of the constitution will go into the details and empower the local legislature to pass laws and regulations without intervention of His Majesty in Council, to enlarge the jurisdiction of the High Court in necessary matters, empower it to issue writs wherever necessary. These are details which will have to be referred to a Committee how and in what manner jurisdiction has to be enlarged. For this, the legislature, as we propose to have it, is entitled to go into these things. Certainly, my friend Sir Alladi would say that it is not a matter which could be disposed of at a sitting by all people; that it must be referred to a Committee of experts, so that they may look into every one of these clauses before incorporating them finally into the Bill. We have not that opportunity. He merely says the High Court's powers ought to be enlarged in a particular manner which may be good or bad. We admit it is good. Sometime later on, it may be found bad or oppressive or hard. There may be a necessity for decentralisation.

The powers of superintendence by the High Courts may be unnecessary, and uncalled for in certain matters. Therefore if we irrevocably confer all these powers on the Provincial High Courts, it will be very difficult. Why should we introduce those details? I should therefore say that my friend only wanted to bring to notice, by placing this amendment, the need for enlarging the powers of the High Courts in this direction. No doubt he has chosen the wrong method. The right method will be to place it before the Legislature and see to it that the Provincial Legislature has all the powers to enlarge the powers of the High Court in the matter of superintendence regarding revenue matters. I therefore request him not to press his amendment because it will lead to unnecessary complications.

Mr. K. M. Munshi (Bombay: General): Mr. President, Sir, the remarks of my friend Mr. Ananthasayanam are based on the present Government of India Act. But the reason why Sir Alladi's amendment is necessary has been placed before the House fully. The position with regard to Prerogative Writs is a technical matter and naturally therefore there might be a certain amount of difficulty for ordinary men to understand it but we must realise the important fact in this country, *viz.*, that only the High Courts of Calcutta, Bombay and Madras which have inherited the jurisdiction of the King's Bench Division have the power to issue Prerogative Writs within the original jurisdiction of those cities. Other High Courts have not that power nor does the power of these three High Courts extend beyond the original jurisdiction of the three towns concerned. The intention of this Clause is to see that every High Court in India should have the same power of issuing Prerogative Writs as the King's Bench Division has in England. This is not covered by the Government of India Act, nor converted by anything else. What this amendment seeks is that the High Courts in India in the Provinces should have the powers possessed by the King's Bench Division. Those Prerogative Writs were ancient and known to the English Common Law but many of them have now been brought into use in Calcutta, Madras and Bombay and as lawyer

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members of the House would realize during the difficult days of 1942 to 1945 when the Defence of India Act was in operation, these writs did a great deal of service in vindicating them.

Further we have to consider this fact also that this Constitution of India, of Free India, will be a kind of Charter. It will also contain Fundamental Rights and also recognize the Rights of Citizens in certain Fundamental Rights and certain obligations on the part of Government. Now all those must be enforced by some kind of remedy in the nature of the remedies which are now secured by a Britisher from the King's Bench Division. In the Constitution of the Union where the Supreme Court is constituted the Supreme Court has been invested with the power to issue these Prerogative Writs. With regard to the Constitutional rights and various other rights, if the power is only invested in the Supreme Court and not in any other High Court, it will follow that every citizen in order to vindicate his rights would have to come to Delhi. The intention of the amendment moved by Sir Alladi is that all the High Courts must have similar powers to issue Writs within their jurisdiction. This is the only meaning of this clause. It is necessary to have it in the Constitution because otherwise a Legislature may take away or attempt to take away certain powers of the High Court. Any analogy of the Government of India Act would not apply. This being the object, it is necessary that this amendment should be there.

I know that the word 'Prerogative Writs' is a very vague word. That is this reason why Sir Alladi's amendment uses the words—"any substituted remedies therefor". The idea is that either in a form defined by the Constitution or by any law made under the authority of the Constitution, those Writs will be preserved. There is no doubt about it.

The Prerogative Writs are largely the creature of common law in England but attempts are made in England to put them in the Statute book in a precise form. There is no reason why we should now allow the Common Law form to remain in its vagueness, in the present proposals. Some attempt will be made later to define those Writs in a proper legislation. The principle embodied in the amendment is that the High Courts in the Provinces must have the power to issue Prerogative Writs or some remedies of the kind. So, the objections raised by my friend Mr. Ananthasayanam are not valid.

As regards Clause (b), there is a restriction imposed by the Government of India Act as regards jurisdiction in revenue matters. This is only done as a matter of history. This amendment recognizes the principle that even revenue matters are subject to law. As regards Clause (c)—General superintendence, the High Courts will have superintendence over all Subordinate Courts and this clause does not require any elaboration.

The object is that this principle must be embodied in the Constitution. It is not intended that the Provincial Legislature should have the power to tinker with these powers of the High Court. The actual power and independence of the High Courts in these matters have to be maintained in order that the liberties and rights of citizens are not curtailed by a majority in the Legislature. In defence of civil liberties and in the interests of democracy these powers are essential.

Mr. Tajamul Husain: Clause 3 of Part II lays down that the Pay of the Provincial High Court Judges cannot be decreased during their term of Office, but it does not say anywhere that it cannot be increased. Sir, we must maintain the dignity and impartiality of the High Courts at all costs. If we do not mention in our Act that their pay shall not be increased and decreased, it will be giving them a chance—because after all they are human beings—they will be looking upto the Legislature for

favours of increment of their pay. This is a very important matter. I have not given notice of any amendment. The reason was that some honourable members had sent amendments. Therefore, Sir, my friend Rai Bahadur Shyamnandan Shahai has suggested the change, which I hope the Honourable Mover will accept. At present the provision reads:

"The emolument and allowances of the Judges shall not be diminished during their term of office."

I suggest substituting the word "varied" for the word "diminished"; with this change it will read:

"The emoluments and allowances of the Judges shall not be varied during their term of office".

I submit this for the acceptance of the House.

Shri L. Krishnaswami Bharathi (Madras: General): Sir, I wish to say one thing in reference to Clause 1 of Part II. The first part of it reads:

"The provisions of the Government of India Act, 1935, relating to the High Court should be adopted *mutatis mutandis*, ..."

I find Sections 219 to 231 of the Government of India Act relate to High Courts. With reference to one of the important provisions in that Act, I find the question of language comes in. Section 227 of that Act reads:

"All proceedings in every High Court shall be in the English language".

I do not know if sufficient attention has been given to this aspect of the matter. I do not think, Sir, it is the intention of the Mover that the proceedings in the High Courts shall be in the English language. We are now talking of a national language or All-India language. My own personal view is that in every province, the provincial language shall be the language in which all the proceeding of the Province, including those of the High Court, shall be carried on. It may be that for some transitional period, we may have the English language, but I do not think we can allow English to be the language of our High Courts for all time to come. But the position is, if we accept the first part of this Clause as it stands with the words "*mutatis mutandis*" we may be committed to having the English language. I therefore, wish that some suitable provision may be made in this clause so as to avoid Section 227 of the Government of India Act with reference to the English Language.

Mr. President: As there is no one else who wishes to speak the Mover of the Resolution may reply to the debate, if he wishes to.

The Honourable Sardar Vallabhbhai J. Patel: Sir, I accept Sir Alladi's amendment.

With regard to one or two questions that have been put, I would like to say a few words. Regarding the question raised by Mr. Jaipal Singh as to what has been done about the separation of the judiciary from the executive, I can only say that this is not the place to Introduce that subject. This clause we are now considering only refers to the formation of the High Court, its constitution, the method of appointment of the judges, its powers and things like that. The real question which he has raised can be decided by the Legislature, it is a matter of policy to be decided by them; and I do not think there will be difficulty now in separating the judiciary from the executive.

The other point raised is about changing the word 'diminished' into 'varied', that the word 'diminished' should be substituted by the word 'varied'. I do not think this change is necessary for the existing provision says that the emoluments etc., should not be varied to the disadvantage of the judges, and that clears the position. So I do not propose to have any changes made in the wording.

As I said, I accept Sir Alladi's amendment, and I commend the proposition for the acceptance of the House.

Mr. President: I shall now put the motion to the House.

Shri L. Krishnaswami Bharathi: My point regarding the language in the High Court has not been answered to. It is an important point.

Mr. President: It is, of course, an important point; but I suppose the Drafting Committee will attend to it.

Shri L. Krishnaswami Bharathi: Sir '*mutatis mutandis'* means everything as it is, which means that you cannot vary the provision in the Government of India Act, at the time of drafting our provision. If we accept it as it is, the Drafting Committee will be committed to keeping English as the language of the High Court.

Dr. B. Pattabhi Sitaramayya (Madras: General): Sir, I think '*mutatis mutandis*' means with the necessary changes.

Mr. President: Yes, that is my impression also. This will cover any changes that the Drafting Committee may suggest ultimately.

I shall put Sir Alladi's amendment to vote.

That the following proviso be added at the end of Clause 1:

"Provided that—

(a) all the High Courts in the Union of India shall have the right to issue prerogative writs or any substituted remedies therefor throughout the area subject to their appellate Jurisdiction;

(b) the restriction as to jurisdiction in revenue matters referred to in section 226 of the Government of India Act, 1935, shall no longer apply to the High Courts; and

(c) in addition to the powers enumerated in section 224 of the Government of India Act, 1935, the High Courts shall have powers of superintendence over subordinate courts as under section 107 of the Government of India Act, 1915."

The motion was adopted.

Mr. President: Then I shall put the resolution to the vote of the House as amended, *i.e.*, with the addition of the proviso which has been just accepted. I do not think I need read out the whole clause.

Part II, as amended was adopted.

Part III—Provincial Public Service Commission and Provincial Auditor-General

Mr. President: Now we pass on to Part III.

The Honourable Sardar Vallabhbhai J. Patel: Sir, this part refers to the Public Service Commissions and the Auditors-General.

"Provisions regarding Public Service Commissions and Auditors-General should be inserted on the lines of the provisions of the Act of 1935. The appointment of the Chairman of members of each Provincial Public Service Commission and of the Auditor-General should be vested in the Governor in his discretion."

It is proposed to give the power to the Governor. I move the proposition for the acceptance of the House.

Mr. President: There are amendments to this by Shri Khurshed Lal and Shri Gopinath Srivastava, Shri S. L. Saksena, Panditjit and Mr. Santhanam.

(The amendments were not moved.)

Shri K. Santhanam: Sir, with reference to Part III, I have an amendment (No. 23 on Second Supplementary List, dated the 16th July 1947). Though I do not want to move the amendment at this stage, I want you, Sir, to give a ruling that this can be taken up when the Union Constitution is taken up for consideration, as it has been suggested that it can be taken up at that time. In only want to make sure that this will not be ruled out then. I want to know whether you will permit me to move the amendment at that time.

Mr. President: If you wish to move the amendment now you can do so I can give you no promise as to the future. I can permit you to withdraw your amendment now if you wish to, and the question will be considered at the right time, whether the amendment can be moved in connection with the other report.

Shri K. Santhanam: Sir, I do not wish to move my amendments.

Mr. President: The question is:

"That Part III be accepted."

The motion was adopted.

Part IV—Transitional Provisions

The Honourable Sardar Vallabhbhai J. Patel: Sir, I move:

"1. Any person holding office as Governor in any Province immediately before the commencement of this Constitution shall continue as such and shall be deemed to be the Governor of the Province under this Constitution until a successor duly elected under this Constitution assumes office.

2. There should be similar provisions *mutatis mutandis* in respect of the. Council of Ministers, the Legislative Assembly and the Legislative Council (in Provinces which decide to have an Upper House).

3. The Government of each Governor's Province shall be the successor of the Government of the corresponding Province immediately before the commencement of this Constitution in respect of all property, assets, rights and liabilities."

These are provisions for the transition period in order to avoid an interregnum. I do not think there can be any controversy over this acid I hope it will be accepted.

Shri T. A. Ramalingam Chettiar (Madras: General): I do not wish to move my amendment to Clause 1 (No. 119 on list, dated the 15th July 1947).

Shri K. Santhanam: I do not want to move my amendment to Clause 3 (No. 120 on List, dated the 15th July 1947).

Shri M. Ananthasayanam Ayyangar: I do not wish to move my amendment to Clause I (No. 24 on Second Supp. List dated the 16th July 1947).

(Pandit Govind Malaviya, Shri Rohini Kumar Chaudhury, Shri M. Ananthasayanam Ayyangar, Shri Mohanlal Saksena and Prof. N. G. Ranga did not move their amendments in the 3rd and 4th Supplementary Lists).

Mr. President: There are two amendments by Mr. Ananthasayanam Ayyangar, which are independent propositions. I shall take them up later.

Mr. K. M. Munshi: I have only one remark to offer with regard to Clause 3 of this part which says:

"The Government of each Governor's Province shall be the successor of the Government of the corresponding Province immediately before the commencement of this Constitution in respect of all property, assets, rights and liabilities."

I feel, Sir that the words "successor of the Government" might create difficulties and at this stage it would serve no useful purpose to keep Clause 3. I therefore submit that Clause 3 should be deleted. The words do "successor Government" might lead to other complications which need not be invited at this stage.

Mr. H. V. Kamath (C. P. & Berar: General): Mr. President Clause 1 of this part is of course unexceptionable and I think there will be no difficulty in the way of its acceptance by this House. But upon its acceptance certain consequences will, to my mind, flow from it and therefore I wish to draw your attention and the attention of this August Assembly to those consequential aspects of this clause, *viz.*, Clause 1 of Part IV. This clause says:

> "Any person holding office as Governor in any province immediately before the commencement of this Constitution shall continue as such and shall be deemed to be the Governor of the Province under this Constitution until a successor duly elected under this Constitution assumes office."

We are today passing from the darkness of servitude to the light of freedom. But there is bound to be an interregnum between our Dominionhood and that Republican Independence for which we are striving. This interregnum may be long or it may be short, and again there will be another time-lag between today and the commencement of this constitution. By 'Commencement' I believe the promulgation of this constitution is meant. I presume that the constitution will be promulgated perhaps by the end of this year but between now and that date of the promulgation of the constitution we are entering upon a new state and that is the state of Dominionhood. The Indian Union will be formally ushered in or inaugurated as a Dominion on the 15th of next month. Therefore, if according to this clause, in December when the constitution is likely to be promulgated, there are certain Governors in certain Provinces, they are likely to continue as such and they will be deemed to be the Governors under this constitution, I want to emphasise the word "shall be deemed to be the Governor of the Province under this constitution." I think it would be derogatory to the dignity of the constitution, if certain non-nationals are permitted to continue as Governors under this Constitution after the commencement of this Constitution and before elections under this constitution take place. As we all know, very shortly, in the middle of next month, it will be within our power; within the competence of our own leaders to say who will be Governors and where. If, unfortunately some non-nationals—Europeans or Britishers remain or are appointed as Governors in certain provinces, on August 15th, it will follow that in December when the Constitution will be inaugurated or will commence, they will be there and therefore they will continue as Governors under this Constitution till the elections take place and their successors assume office. Therefore Sir, I submit that this is a position which, as a Sovereign body today an aspiring to become shortly a Sovereign legislature of the Dominion, we cannot envisage or tolerate. We have struggled hard these many years and decades to see the end of foreign rule in India. A few months less than five years ago our cry, our revolutionary campaign of 'Quit India' was launched and it is a happy coincidence that in the very month of August we in India are attaining Dominionhood if not independence, quite a good degree of independence, and power will, I hope, come into Our hands. Thus, Sir when it will be within our competence to have our own Governors, I for one want that our own nationals and citizens of the Indian Union should be the Governors when the new Constitution is inaugurated. I wish to draw your attention to these words in the Transitional Provisions I am quoting: "In any province immediately before the commencement of this Constitution". We should take care to see that the Governors in all our Provinces immediately before the commencement of this Constitution are Indians, our own nationals and not non-nationals or foreigners. Have we undergone all these troubles and fought the rulers on so many occasions merely to see these martinets, these panjandrums and these minions of a foreign imperialism continuing their rule in our Provinces? I should like to see the end of it. I do not like to see the day when even after the commencement of this Constitution these very Europeans, whom we asked to quit five years ago, will be continuing as our rulers in certain provinces. I was hard put to it, some days ago to explain to a common man, why Lord Mountbatten

was recommended was for the Governor-Generalship of the Dominion of India. We can quite understand and appreciate the high considerations of diplomacy, political strategy and tactics which influences the recommendation of Lord Mountbatten for the Governor-Generalship. But the common man fails to understand it all. It is true that we cannot always act on the views of the common man. But, at the same time, in a democracy the psychology of the common man has its place. Democracy is largely conditioned by the psychological reflexes of the common man. I would request the Hon'ble Mover and this Assembly to bear these considerations in mind and see that the Governor of any Province immediately before the commencement of this Constitution is not a non-national. It is our men, our citizens who should be there. It is only if we see to this that we can produce the necessary psychological reaction in the mind of the common man. We will fail to produce this essential psychological effect if on the dawn of freedom and independence he were unfortunately to see the same foreigner still stalking the land as ruler or Governor. Our 'Quit India Resolution' is fast bearing fruit. At such a time we should create in the mind of the common man the impression that all power has been taken over by us towards the consummation of the 'Quit India Resolution' which was inaugurated by us five years ago.

नान्यः पन्था अयनाय विद्यते (*nanyah pantha ayanaya vidyate*)

When we are shortly going to witness the dawn of independence we must make a supreme effort to see that the common man is able to grasp the fact that we are out on masters and that there is no foreigner ruling over us. The sooner we do this the better it is for us and for our country. If we achieve this we will have gone a long way towards awakening the 'shakti' necessary for building up our Indian Union. I am sure I am voicing the feeling of a vast majority in this Assembly when I say that at the time of the inauguration of the Provincial Constitutions, no foreigner remains as Governor in any of the Provinces. It would be a mistake to allow a foreigner to continue as Governor of a province, after that date.

Sir, I will conclude with the words used on another historic occasion and request this August Assembly to tell the foreigner "We asked you to Quit India five years ago. We now again tell you with more power, more authority in our hands: For God's sake go. Leave India to its own fate. Leave India free to build up a strong Independent Sovereign Republic." "Jai Hind."

Sri M. Ananthasayanam Ayyangar: I should like to say a few words with regard to the Transitional Provisions. These ought to be absolutely transitional. That is my desire.

We must congratulate ourselves, Sir that we have spent five days over the elaborate provisions recorded in this Constitution submitted to the Assembly. I am sure we will be able to finish the details considered by the Expert Committee that will be appointed to go into the details of the formalities and bring out the Constitution at an early date. All that I am anxious about is that, when the British Government who originally fixed 30th June 1948 for ushering in a new Constitution have advanced the date, we should not be found un-ready. We should have our Constitution ready and there should be no delay on our part. I do want that 26th January 1948, the day which we have been celebrating as Day of Independence for India should surely be the day when we celebrate the Independence of India. Let it not be said that we have unnecessarily dragged the proceedings here. We will not be charged with that. We have spent only five days on this important matter. We have not left the details to take care of themselves. I hope all concerned will be able to push through the necessary work so that on the 26th day of January we will really have an Independent India and work under an Independent Constitution. As regards the present Governors continuing till then, I am

[Sri M. Ananthasayanam Ayyangar]

sure that they will not continue for any longer time than is necessary. When the new constitution comes into being, I expect that only nationals will be appointed as Governors.

Thirdly, after the new constitution is framed, it will take some time before elections take place; before delimitation of constituencies takes place. All these will take some time. I do not want to have any definite date fixed within which elections should take place under the new constitution. At the same time I would like to urge that after the new constitution has been framed, care should be taken to see that within six months and not later than that, the new constitution must be in full swing. Even before the constitution is drafted, since we are providing for adult franchise; we should ask the existing Governments to prepare the electoral rolls regarding adults in every village and town. Thereafter, the delimitation of constituencies will have to take place. No effort should be lost and all efforts must be made to see that the new constitution comes into being as early as possible. With these words, I support these transitional provision clauses.

Mr. President: Does anyone else wish to speak about this?

Shri Biswanath Das (Orissa : General): Mr. President, Sir, I heartily congratulate the Honourable Sardar Patel for having piloted the report within the shortest possible time, Sir, while congratulating him, 1 must also confess that the constitution that has been drafted for the provinces gives them less powers than what the provinces were enjoying under the Act of 1935.

We expect to have under the new dispensation a government of the people for the people and by the people. Now, all these three slogans will be meaningless if we do not have the leaders of the people of the provinces as governors of the provinces. Sir, the interim period that lies between the present and the date of the election should not be marred by having men of the permanent services as Governors of provinces. Sir, I support the decision taken in nominating Lord Mountbatten as the Governor-General. There may be important reasons and justifications for the same. The country will be fully with our leaders in that. Sir, that cannot however be translated into the provinces. I am not here to make any distinction between nationals and non-nationals. Sir, I cannot agree to see that people, who have been public servants, continue as governors of provinces. Most of the I.C.S. people do not have the Indian outlook and cannot in any sense be termed as servants of the people. That being the case, I would submit that it would be very hard on the country to tolerate a system of administration in which the same I.C.S. regime is being perpetuated in the provinces. I believe our leaders will not commit this blunder.

Sir with these submissions, I fully support the resolution and congratulate the Committee on having presented a report which was acceptable to the House so as to be passed within the shortest possible time.

The Honourable Sardar Vallabhbhai J. Patel: Sir, I suggest a verbal alteration in Clause 1, third line instead of the words "shall continue." I want. to insert the words "may be continued". Any person holding office as Governor in any province immediately before the commencement of this Constitution *"may be continued*". In the fourth line I suggest the insertion of the word "when so continued" after the word "and". These are purely verbal alterations.

I will now remind the House that perhaps some of the friends who gave valedictory orations have forgotten that there is still one clause, Clause 15, to be moved. It is a controversial clause and it will take some time.

Shri C. Subrahmaniyam (Madras: General): May be continued by whom? Who is the authority to continue him as Governor under the new Constitution?

The Honourable Sardar Vallabhbhai J. Patel: No doubt by the Government of India, who is the authority to appoint him. There is no difficulty about that.

Mr. H. V. Kamath: "May continue" or "may be continued". Why not may continue"?

The Honourable Sardar Vallabhbhai J. Patel: Put in "may continue" if you like.

Dr. P. S. Deshmukh (C. P. & Berar: General): "May be continued" is better. "May continue" is likely to be interpreted as "should continue" and Mr. Kamath would be defeating just the object that he has in view. "May be continued" involves continuation only if so ordered by the Government.

Mr. President: I put this resolution to vote with this verbal change. In place of "shall continue" substitute the words "may be continued" and in the fourth line add the words 'when so continued' after the word 'and'.

The motion was adopted.

Mr. President: Mr. Munshi, you moved that Clause 3 be deleted. I am sorry I did put that to vote, but I take it that it is accepted.

The motion was adopted.

Mr. President: I shall now put the whole resolution as amended by the deletion of Clause 3 to vote, because there was some misunderstanding.

Part IV as amended, was adopted.

Mr. President: Mr. Ananthasayanam Ayyangar has given notice of an amendment.

(The amendment was not moved.)

CLAUSE 15

Mr. President: There was one clause which was passed over and that was Clause 15 and we may take up that now.

The Honourable Sardar Vallabhbhai J. Patel: I move:

"15. (1) In the exercise of his responsibilities, the Governor shall have the following special responsibility, namely the prevention of any grave menace to the peace and tranquillity of the Province or any part thereof.

(2) In the discharge of his special responsibility, the Governor shall act in his discretion:

Provided that if at any time in the discharge of his special responsibility he considers it essential that provision should be made by legislation, but is unable to secure such legislation he shall make a report to the President of the Federation who may thereupon take such action as he considers appropriate under his emergency powers."

Honourable Members may kindly refer to my introductory speech in this connection. This question of discretionary powers of the Governor is a matter which requires very careful consideration. On the one hand it encroaches upon the powers of the Ministry. The Governor has not got the services under him and if he is to exercise his functions in his discretion, if he is given authority to take control of the services for the purpose of discretionary responsibility, then it is difficult to conceive how the ministry can function and it almost amounts to a sort of introduction of Section 93 under the provisions of his Act. Again on the other side there is a feeling that looking to the conditions prevailing in the country, some provision should be made for giving special responsibilities to meet with the difficult situation which has arisen in the country today. For this purpose this clause requires careful consideration and I hope all points of view will be made clear in this debate. I therefore move this proposition for the acceptance of the House.

The Honourable Pandit Hirday Nath Kunzru (U.P. General): Mr. President, I venture to suggest that it will be in the interest of us all if the discussion of this question is postponed till tomorrow. We have a new amendment before us of which notice has been given by Mr. Munshi and I think it is desirable that, we should have some time to think over it. There is no doubt that we have been thinking about this question for many days, but no suggestion was before us in the exact form which it has assumed in Mr. Munshi's amendment. I suggest, therefore, that we might take it up tomorrow. It is only half-past twelve now and the House will not lose more than half an hour if we adjourn the discussion till tomorrow. I hope that my suggestion will meet with the approval of the House, and of you, Mr. President.

Mr. President: I was going to suggest that instead of not utilising this half hour we might have the amendments moved and further discussion might take place tomorrow if that meets with the approval of the House. Thus the members will have an opportunity of considering the amendments also with the speeches of the Movers of those amendments if that meets with the wishes of the House.

The Honourable Pandit Hirday Nath Kunzru: Are you suggesting that the amendment should be moved today and that the speeches might be reserved till tomorrow?

Mr. President: If any mover of any amendment wishes to have that right, I shall give him that right.

Dr. B. R. Ambedkar: It should not be concluded today.

Mr. President: The first amendment is by Messrs. Ajit Prasad Jain, Khurshed Lal and Gopinath Srivastava.

(The amendment was not moved.)

(Messrs. K. Santhanam, Kala Venkata Rao, M. Ananthasayanam Ayyangar, Shibban Lal Saksena, and Pandit Govind Ballabh Pant did not move their amendments.)

Mr. B. M. Gupte (Bombay: General): I beg to move Sir, that the proviso to sub-clause (2) of Clause 15 be deleted and the following new sub-clauses be added:

"(3) If in the discharge of his special responsibility the Governor is satisfied that a situation has arisen in which immediate action has to be taken, he may, by a proclamation assume to himself all or any of the powers vested in or exercisable by any provincial body or authority except the High Court.

(4) The Proclamation shall be communicated forthwith to the President of the Union, who may thereupon take such action as he considers appropriate under his emergency powers.

(5) The Proclamation shall cease to operate at the expiration of 2 weeks, unless revoked before then by the Governor himself or by the President of the Union under his emergency powers, whichever is earlier."

Mr. President: Pandit Hirday Nath Kunzru.

The Honourable Pandit Hirday Nath Kunzru: Mr. President, the amendment of which I have given notice runs as follows.

"That for clause 15, the following be substituted:

'Whenever the Governor is satisfied that there is a grave menace to the peace, and tranquillity of the Province or any part thereof, he may, in his discretion report to the President of the Federation.

NOTE.—The President may take such action on the report under the emergency powers vested in him as he considers appropriate'."

Sir, I shall reserve my speech till tomorrow because it will obviously be an advantage to consider the matter as a whole after all the amendments have been moved.

Mr. President: Mr. Munshi.

Mr. K. M. Munshi: Sir, this amendment is only an elaboration of Mr. Gupte's amendment. I think I should also reserve whatever I have to say on the amendment for tomorrow.

Mr. M. S. Aney: On a point of order, Sir, Mr. Munshi's amendment is an amendment to an amendment given notice of by Pandit Govind Ballabh Pant but inasmuch as Pandit Pant did not think it worth while to move his amendment at all there is no question of Mr. Munshi moving an amendment to that.

Mr. President: May I point out that an amendment in the same words as Pandit Gobind Ballabh Pant's has been moved by Pandit Kunzru?

Mr. M. S. Aney: Then it will require a change in the wording which should be "moved by Pandit Hirday Nath Kunzru."

Mr. K. M. Munshi: Mr. Aney seems not to have read the paper correctly. I have moved two amendments one to Pantji's, and another to Mr. Gupte's amendment. Since the former amendment was not moved, and Mr. Gupte has moved his amendment, I am perfectly in order in spite of Mr. Aney's protest. The amendment is:

"That for Clause 15 the following be substituted:

'(1) Where the Governor of a Province is satisfied in his discretion that a grave situation has arisen which threatens the peace and tranquillity of the Province and that it is not possible to carry on the Government of the Province with the advice of his Ministers in accordance with the provisions of section 9 he may by Proclamation, assume to himself all or any of the functions, of Government and all or any of the powers vested in or exercisable by any Provincial body or authority; and any such Proclamation may contain. Such incidental and consequential provisions as may appear to him to be necessary or desirable for giving effect to the objects of the Proclamation including provisions for suspending in whole or in part of the operation of any provisions of this Act relating to any Provincial body or authority:

Provided that nothing in this sub-section shall authorise the Governor to assume to himself any of the powers vested in or exercisable by a High Court or to suspend, either in whole or in part, the operation of any provision of the Act relating to High Courts.

(2) The Proclamation shall be forthwith communicated by the Governor to the President of the Union, who may thereupon take such action as he considers appropriate under his emergency powers.

(3) The Proclamation shall cease to operate at the expiration of two weeks, unless revoked earlier by the Governor himself or by the President of the Union."

Mr. H. V. Kamath: With due deference to the legal and constitutional ability of Mr. Kunzru, I would like to submit that the phrase "satisfied in his discretion" is not quite happy. One may say or do something in one's discretion, but "to be satisfied in one's discretion" is not usual.

Mr. President: We shall adjourn the discussion of this till tomorrow.

Honourable Pandit Hirday Nath Kunzru: I shall deal with Mr. Kamath's point tomorrow.

Mr. President : We might now take up the other item on the agenda, namely the report of the Committee dealing with the Union Constitution. Pandit Nehru will move the motion which stands in his name.

Mr. H. V. Kamath: Mr. President, last night we received notice of a motion to be moved by Dr. Nehru tomorrow regarding our National Flag, I would request you to let us know up to what hour we could send in amendments to this motion.

Mr. President: Since you received the notice last night—, you could have sent in your amendment by now, but if you have not sent it, you may send it up to 5 O'clock today.

Maulana Hasrat Mohani (U.P. : Muslim): I do not find any mention of the amendment moved by me about this Union Report. There is an amendment by Dr. Deshmukh. I submitted mine at the time.

Mr. President. The amendments have been circulated as Honourable members know. We would have received that amendment late in the afternoon of Saturday. But all amendments have not been placed on the table.

Maulana Hasrat Mohani: I gave my amendment to Mr. Lengar two days before Dr. Deshmukh's amendment. It must find a place in the agenda and it must be before all Honourable members.

Mr. President: We shall consider it when we come to that.

REPORT ON THE PRINCIPLES OF THE UNION CONSTITUTION

The Honourable Pandit Jawaharlal Nehru (U.P.: General): Mr. President, Sir. I beg to move :

"That the Constituent Assembly do proceed to take into consideration the *Report on the principles of the Union Constitution submitted by the Committee appointed in pursuance of the Resolution of the Assembly of the 30th April, 1947."

This Report has been circulated and, after the full Report was circulated a *supplementary Report or rather an addendum to the previous report has also been circulated. In this Supplementary Report certain changes have been made in the previous Report. So I am putting before the House the report as amended by the Supplementary Report. I ventured to circulate a note on this report to the members of this House two days ago in which I pointed out that so far as the Preamble and part of Clause 1 were concerned, they were covered more or less by the Objective Resolution of this House. That Resolution holds. It may have to be varied in regard to smaller matters because of Political developments since it was passed.

A Sub-Committee has been asked to go into the question of drafting. We are not changing the Objectives Resolution at all. What I mean is, adapting it to the Preamble. The Objectives Resolution is history and we stand by all the principle laid down in it. In adapting it to the Preamble, certain obvious changes have to he made. At the present moment, as the House is aware, we are not going into the drafting of the Constitution, but are establishing the principles on which this should be drafted. Therefore, that draft of the Preamble is not necessary. We have settled the principles. So I suggested in my note that we may not consider this matter.

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*Appendix 'A'.
†Appendix 'B'.

Part II dealing with Citizenship has not been finally decided yet by the Sub-Committee and Part III dealing with Fundamental Rights has already been considered by this House and passed. I would therefore suggest that we might begin consideration of this Report from Part IV. Chapter I, The Federal Executive. There are one or two minor matters which you may have to consider in Parts I and II. It is not necessary to take these one or two simple matters. It is better to begin with Part IV and consider the rest at a later period.

May I point out that I just mentioned that Fundamental Rights have been considered by this House and passed. All that we have passed will of course come up before the House once again for final consideration. There are many new members and it has been pointed out to me by some of them that they were not present here when these Fundamental Rights were considered and passed. Well, it is perfectly true. It is a little dim-cult for us to go back repeatedly and start afresh That I do not think will be proper. But, as a matter of fact, all these things will finally come up before the House and it will be open to any of the members to point out anything or to amend any part of it at that time. So, I suggest, Sir, that we may proceed now with Part IV, Chapter I, if you have got the printed pamphlet, it is on page 5. It begins with Federal Executive.

The Report is a fairly long one. At the end of the Report, you will find and Appendix dealing with the judiciary. This is the Report of the *ad hoc* Committee on the Supreme Court. That is Only for your information because these conclusions have been more or less incorporated in the Report.

Obviously, when we consider the constitution, the fundamental law of the nation as it is going to be, it is an intricate and important matter and we cannot just rush through it without giving it sufficient time and consideration. I may inform the House that so far as the Union Constitution Committee was concerned, it gave it their very earnest Consideration, not once, but several times. We met the Provincial Constitution Committee also on several occasions and this is the result of our joint consultation, but mostly of the Union Constitution Committee's work itself.

I have just been given the list of amendments. This paper contains 228 amendments. I am told, in all we have reached the figure 1,000, I have not seen them as yet, none of them. It is rather difficult for me to deal with them now. I should like to abide by the wishes of the House in the matter.

If I may suggest one thing at present, it is this: that we start with Part IV—Federal Executive. The very first thing that comes up is how the Head of the Federation should be elected. I understand that there are several view points on that. Possibly that particular item may be taken up. It is a simple item. The views may be this way or that: but this is a simple issue and we may consider it now, not only because it is the first item, but because it can easily be taken up without a knowledge of the other large number of amendments. I beg to move this.

May I, Sir, now go on with item I of Part IV?

Mr. President: I will first put the resolution that the Report be taken into consideration.

Maulana Hasrat Mohani: I have stated that before you take into consideration the Report. I want to make certain points clear. In this paper, which he claims to be a supplementary report, Pandit Nehru has made certain suggestions. After all, these are only his suggestions. Is it necessary for myself or for anybody else to accept his suggestion? I for one do not accept these suggestions.

[Maulana Hasrat Mohani]

Besides, I have got very strong reasons for that. Pandit Nehru the other day said that we have already passed the Objectives Resolution and we have to keep that resolution before us in drafting everything now or afterwards.

Mr. President: Maulana Saheb, the simple proposition that I am putting to this House at the present moment is that the Report of the Committee be taken into consideration. When that is accepted, we will go clause by clause.

Haji Abdul Sathar Haji Ishaq Sait (Madras : Muslim): Sir, members can express their views whether this report should be taken into consideration or not. We should have a right to speak on that motion. Maulana Saheb is speaking on that motion.

Mr. President: Is it your suggestion that the Report should not be taken into consideration?

Maulana Hasrat Mohani: Yes. What I say is this, Pandit Nehru says that he has got the Objectives Resolution already passed by the House.

Maulana Hasrat Mohani: Yes. What I say is this. Pandit Nehru in that Objectives Resolution. It says simply that we will have a Republic. It does not say whether the Republic will be a Unitary Republic or a Federal Republic. Even if it is a Federal Republic, it does not make it clear whether that Federal Republic, will be of a centrifugal or centripetal character and unless and until we decide all these things, it is futile to determine the model of Provincial Constitutions. This is why I suggested in my speech the other day: you want to get one thing passed in your provincial constitution; when you have passed the provincial constitution and when I propose on the occasion of a proposed revised Union Constitution Report coming for consideration before the next meeting of the Constituent Assembly perhaps in October, an amendment to the effect that it must be a Union of Indian Socialist Republics, then you may say, "you are precluded from doing that as that will be something like a settled fact. We have passed the provincial constitution and now there is no scope, left for Hasrat Mohani to add anything or to say against that."

I am afraid, Sir, that it will be very easy for you to declare my amendments to the Union Constitution out of order as you did the other day in connection with an amendment proposed by my friend. Mr. Tajamul Husain. You will say "Well the provincial constitution has been accepted and passed, now, your amendments are out of order. You will say, that the report has been accepted and therefore my amendments are out of order. I will have raised no objection at this stage if this matter stands over. Then I will have every right to propose amendments on the occasion when you go clause by clause. Or I will have full rights to say that I oppose the Objectives Resolution also. I have got two reasons. One I have made clear that it does not decide anything.

Mr. Shankar Dattatraya Deo (Bombay : General): We cannot follow a single word or any idea.

Mr. President: (To Maulana Hasrat Mohani) Come to this mike, please.

Mr. Jainarain Vyas (Jodhpur State): On a point of order, Sir. The Honourable Member has already started considering the Report. The question before the House is whether the Report be considered or not. That question must be considered first.

Maulana Hasrat Mohani: Before considering the Report he should make certain points clear. It puts me at a great disadvantage if I accept this Report.

Mr. President: As I understand it, the Maulana's point is that I should give him a promise at this stage that his amendment will not be ruled out of order. Obviously I cannot give any promise to any member before the matter actually comes up. But you may all have noticed that I am very liberal in the matter of allowing amendments to be moved even if they come out of time. Unless there is any technical ground, I do not see any reason why his amendment may be ruled out of order. More than this I cannot say anything at this stage. I have given some sort of promise that Maulana wanted. I take it that the House wishes that we should proceed with the consideration of this report.

Many Honourable Members: Yes, yes.

The motion to take the Report into consideration was adopted.

B. Pocker Sahib Bahadur: I wanted to say one word about the proposition you have put.

Mr. President: I put it to vote and it has been carried.

The Honourable Pandit Jawaharlal Nehru: Sir, I suggest that we should begin with Part IV, Chapter I.

"*Clause* 1 (1) The Head of the Federation shall be the President (Rashtrapati) to be elected as provided below.

(2) The election shall be by an electoral college consisting of—

(a) the members of both Houses of Parliament of the Federation, and

(b) the members of the Legislatures of all the Units or where a Legislature is bicameral the members of the Lower House thereof.

In order to secure uniformity in the scale of representation of the units the votes of the Unit Legislatures shall be weighted in proportion to the population of units concerned.

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 and the Legislature of the Unit means the Legislatures of all the states in that group.

(3) The election of the President shall be by secret ballot and on the system of proportional representation by means of the single transferable vote.

(4) Subject to the above provisions, elections for the office of President shall be regulated by Act of the Federal Parliament."

Now Sir, one thing we have to decide at the very beginning is what should be the kind of governmental structure, whether it is one system where there is ministerial responsibility or whether it is the Presidential system as prevails in the United States of America; many members possibly at first sight might object to this indirect election and may prefer an election by adult suffrage. We have given anxious thought to this matter and we came to the very definite conclusion that it would not be desirable, first because we want to emphasize the ministerial character of the Government that power really resided in the Ministry and in the Legislature and not in the President as such. At the same time we did not want to make the President just a mere figure-head like the French President. We did not give him any real power but we have made his position one of great authority and dignity. You will notice from this draft Constitution that he is also to be Commander-in-Chief of the Defence Forces just as the American President is. Now, therefore, if we had an election by adult franchise and yet did not give him any real powers, it might become slightly anomalous and there might be just etxraordinary expense of time and energy and money without any adequate result. Personally, I am entirely agreeable to the democratic procedure but there is such a thing as too much of a democratic procedure and I greatly fear that if we have a wide scale wasting of the time, we might have no time left for doing anything else except preparing for the elections and having elections.

[The Honourable Pandit Jawaharlal Nehru]

We have got enough elections for the Constitution. We shall have elections on adult franchise basis for the Federal Legislature. Now if you add to that an enormous Presidential election in which every adult votes in the whole of India, that will be a tremendous affair. In fact even financially it will be difficult to carry out and otherwise also it will upset most activities for a great part of the year. The American Presidential election actually stops many activities for many-many months. Now it is not for me to criticise the American system or any other system. Each country evolves the system of its choice. I do think that while there are virtues in the American system, there are great defects in that system. I am not concerned with the United States of America. I am concerned with India at present, and I am quite convinced in my mind that if we try to adopt that here, we shall prevent the development of any ministerial form of Government and we shall waste tremendous amount of time and energy. It is said that the American Presidential election helps the forging of unity of the country by concentrating the mind of the entire country on the Presidential election and on the conduct of those elections. One man becomes the symbol of the country. Here also he will be a symbol of the country; but I think that having that type of election for our President would be a bad thing for us.

Some people suggested, why have even this rather complicated system of election that we have suggested? Why not the Central Legislature by itself elect the president? That will be much simpler, of course, but there is the danger that it will be putting the thing very much on the other side, of having it on too narrow a basis. The Central Legislature may, and probably will be dominated, say, by one party or group which will form the ministry. If that group elects the President, inevitably they will tend to choose a person of their own party. He will then be even more a dummy than otherwise. The President and the ministry will represent exactly the same thing. It is possible that even otherwise the President may represent the same group or party or ideas. But we have taken a middle course and asked all the members of all the legislatures all over India, in all the units to become voters. It is just likely that they will be choosing a party man. Always that is possible of course. Anyway, we may rule out electing the President by the Central Legislature as being on too narrow a basis.

To have it on adult franchise, you must have some kind of electoral college; It has been suggested that we may have some kind of electoral college which will include all manner of people—members of municipalities, district boards and so on. That, I think will be introducing confusion without doing good to anybody. It will mean a large number of petty elections for making up the electoral college. In the various legislatures you have already a ready-made electoral college—that is, the members, of the legislatures all over India. Probably they will number a few thousands. And presumably these members of the legislatures will be in a better position to judge of the merits of the individual in question or the candidates than some other larger electoral college consisting of municipal members and others. So I submit to the House that the method that this Committee bus suggested is quite feasible and is the right method to choose a good man who will have authority and dignity in India and abroad.

You will notice that in choosing this method, we have taken care to prevent any weightage in voting, because legislatures, a has been explained, I believe in a note, may not be representative of the population of the numbers of the population. A province like the United Provinces or Madras may have a provincial legislature of 300 persons representing some 60 or 55 million people—I do not know how many. Another legislature may have 50 members representing some 50,000. It will be rather absurd to give the same weightage and the result will be that a number of very small units in the country will really dominate the scene.

Therefore weightage has been disallowed and some formula will have to be worked out carefully to see that voting is according to the population of the units concerned. I beg to move.

Mr. President: We shall take up the amendments to this motion, and resume discussion on this, next day.

Before we depart I would like to make one announcement. We have now the Report of the Union Powers Committee which had been circulated. Members may send in their amendments till day after tomorrow 5 P.M. *i.e.*, up to Wednesday, the 23rd at 5 P.M. (*Some Honourable Members*: "We have not received the Report"). I understand the Report was circulated long ago, in fact that it has been circulated twice. But if still any member has not received a copy, he may take it now.

Some Honourable Members: We are anxious to know the time-table for the next session. May we put off giving notice of amendments till Thursday evening?

Mr. President: Yes, notice of amendments to Union Powers Committee's Report may be given till 5 P.M. on Thursday, the 24th instant.

The House then adjourned till Ten of the Clock, on Tuesday, the 22nd July 1947.

CONFIDENTIAL

APPENDIX 'A'

No. CA/ 63/Cons./47

CONSTITUENT ASSEMBLY OF INDIA

COUNCIL HOUSE,

New Delhi, the 4th July, 1947.

FROM

PANDIT JAWAHARLAL NEHRU,

CHAIRMAN,

UNION CONSTITUTION COMMITTEE

To

THE PRESIDENT,

CONSTITUENT ASSEMBLY OF INDIA.

Sir,

On behalf of the members of the Committee appointed by the Honourable the President in pursuance of the resolution of the Constituent Assembly of the 30th April, 1947, to report on the principles of the Union Constitution, I have the honour to submit the annexed Memorandum which embodies the recommendations of the Committee together with explanatory notes where necessary.

I have the honour to be,

Sir,

Your most obedient servant,

JAWAHARLAL NEHRU,

Chairman.

No. CA/63/Cons./47

CONSTITUENT ASSEMBLY OF INDIA

Memorandum on the Indian Constitution

Preamble.—We, the people of India, seeking to promote the common good do hereby, through our chosen representatives, enact, adopt and give to ourselves this Constitution.

PART I

FEDERAL TERRITORY AND JURISDICTION

1. **Name and Territory of Federation**.—The Federation hereby established shall be a sovereign independent Republic known as India.

Save as otherwise provided or under this Constitution or any treaty or agreement the territories included for the time being in Schedule I shall be subject to the jurisdiction of the Federation.

[NOTE.-The structure proposed to be established by this Constitution being federal in character, the term Federation has been used.]

"India" has been suggested for the name of the State as being the shortest and the most comprehensive.

The words 'save as otherwise provided by or under.... and treaty or agreement" are necessary, because there may be Indian States which, though unfederated and therefore not in the Schedule, may have ceded jurisdiction for certain special purposes by some treaty or agreement.

2. **Admission of New Territory**.—The Parliament of the Federation may from time to time by Act include new territories in Schedule I upon such terms as it thinks fit.

[C*f*. Art. IV, Section 3(I), of the Constitution of the U.S.A., and Section 121 of the Australian Constitution. The power to admit new States is vested in the Congress in the U.S.A. and in the Commonwealth Parliament in Australia.

As a matter of nomenclature it may be explained that in this draft the Legislature of the Federation is referred to as "Parliament"; Unit Legislatures are referred to as "Legislatures". The Federal Parliament consists of the President and a National Assembly comprising two Houses.]

3. **Creation of new units and alteration of boundaries of units.—** The Parliament of the Federation may by Act, with the consent of the Legislature of every Province and the Legislature of every Indian State affected thereby,—

(a) create a new unit;

(b) increase the area of any unit;

(c) diminish the area of any unit;

(d) alter the boundaries of any unit;

and may with the like consent make such incidental and consequential provisions as it may deem necessary or proper.

[NOTE.-This corresponds to S. 290 of the Act of 1935, but is wider in that it provides for the possibility of Indian State territory being included in a province.]

APPENDIX A

SCHEDULE I

TERRITORIES SUBJECT TO THE JURISDICTION OF THE FEDERATION

I. *Governor's Provinces*—

Madras,
Bombay,
West Bengal,
The United Provinces,
Bihar,
East Punjab,
The Central Provinces and Berar,
Assam,
Orissa.

II. *Chief Commissioners' Provinces*—

Delhi,
Ajmer-Merwara,
Coorg,
The Andaman and Nicobar Islands,
Panth Piploda.

III. *Indian States*—

[Here enumerate the acceding or ratifying Indian States:—

(1) Single States.

(2) Groups of States.]

[The Governors' Provinces and the Chief Commissioner's Provinces specified in the Schedule will be automatically within, the jurisdiction of the Federation of India. As regards Indian States, some procedure will have to be prescribed for determining which of them are to be included in the Schedule initially. Under the Act of 1935, accession was to be evidenced by "Instruments of Accessor" executed by the Rulers. If it is considered undesirable to use this term or adopt this procedure, some kind of ratification may have to be prescribed.

If any of the Provinces specified in the Schedule should be partitioned before the Constitution comes into operation, the Schedule will have to be amended accordingly.]

*PART II

CITIZENSHIP

1.**Citizenship**.—At the date of commencement of this Constitution every person domiciled in the territories subject to the jurisdiction of the Federation—

(a) who has been ordinarily resident in those territories for not less than five years immediately preceding that date, or

---

*This part is subject to the decision of the *ad hoc* Committee on Citizenship Clause.

(b) who, or whose parents, or either of whose parents, was or were born in India.

shall be citizen of the Federation:

Provided that any such person being a citizen of any other State may, in accordance with Federal law, elect not to accept the citizenship hereby conferred.

Explanation.—For the purposes of this clause—

"Domicile" has the same meaning as in the Indian Succession Act, 1925.

2. After the commencement of this Constitution—

(a) every person who is born in the territories subject to the jurisdiction of the Federation;

(b) every person who is naturalised in accordance with Federal law, and

(c) every person, either of whose parents was, at the time of such person's birth, a citizen of the Federation;

shall be a citizen of the Federation.

3. Further provisions governing the acquisition and termination of Federal citizenship may be made by Federal law.

Explanation—In this Constitution, unless the context otherwise requires "Federal law" includes any existing Indian law as law as in force within the territories subject to the jurisdiction of the Federation.

[NOTE.-The Provisions regarding citizenship will doubtless rouse keen controversy. The present draft is merely meant as a basis for discussion. *Cf*. Art. 3 of the Constitution of the Irish Free State 1922. which runs—

"Every person, without distinction of sex, domiciled in the area of the jurisdiction of the Irish Free State at the time of the coming into operation of this Constitution, who was born in Ireland or either of whose parents was born in Ireland, or who has been ordinarily resident in the area of the jurisdiction of the Irish Free State for not less than seven years, is a citizen of the Irish Free State and shall, within the limits of the jurisdiction of the Irish Free State, enjoy the privileges and be subject to the obligations of such citizenship:

Provided that any such person being a citizen of another State may elect not to accept the citizenship hereby conferred; and the conditions governing the future acquisition and termination of citizenship in this Irish Free State shall be determined by law."

Clause I is on the lines of the above provision, except that a period of five years has been substituted for seven years in accordance with S. 3(1) (c) of the Indian Naturalisation Act, VII of 1926.

The clause has had to be drafted with due regard to the probability that the Federation will not initially exercise jurisdiction over the whole of India.

A person born in India and modiciled in Bombay, who happens to be resident in London at the commencement of the new Constitution, will be a citizen of the Federation under this clause; but not one domiciled in Sind or Baluchistan, if the Federation does not initially exercise jurisdiction there. It is, however, open to any person to acquire a new domicile by taking up his fixed habitation in another area before the Constitution comes into operation.

Under the Indian Succession Act, 1925, every person has a "domicile" of origin which prevails until he acquires a new domicile. Briefly, his domicile of origin is in the country which at the time of his birth his father was domiciled, and he can acquire a new domicile by taking up his fixed habitation in another country. There is also a provision in the Act enabling any person to acquire a domiciled, British India by making and depositing in some office in British India, appointed in this behalf by the Provincial Government, a declaration in writing of his desire to acquire such domicile provided that he has been resident in British India for one year preceding the date of the declaration. Generally speaking, a wife's domicile during her marriage follows the domicile of her husband. If any person who is at present domiciled, say, in Hyderabad, wishes to acquire a domicile, say, in Delhi before the coming into operation of this Constitution he can do so either by taking his fixed habitation in Delhi or by following the procedure prescribed in the above, provision of the Indian Succession Act, so that at the date of commencement of the Constitution he will become domiciled "in the territories subject to the jurisdiction of the Federation".

Clauses 2 and 3 follow the provisions suggested by the *ad hoc* Committee; Clause 2 is not necessary, if we are content to leave the matter to Federal law under Clause 3. In this connection, there is much to be said in favour of the view of the Calcutta Weekly Notes:

"It is not possible to define exhaustively the conditions of nationality, whether by birth or naturalisation, by the Constitution. If certain conditions are laid down by the Constitution, difficulties may arise regarding the interpretation of future legislation which may appear to be contrary to or to depart in any way from them. For example, the draft of the nationality clause placed before the Constituent Assembly lays down that any person born in the Union would be a citizen of the Union. But what about a woman citizen of the Union marrying an alien national or about an alien woman marrying a Union national? Would the Union Legislature have power to legislate in the first case that the woman would lose her Union nationality or in the second case that she would acquire Union nationality (such being the law of most of the countries)? These are intriguing questions, but all these things have to be pondered before a rigid clause is inserted in the Constitution itself. It would, in our opinion therefore, be better to specify who would be citizens of the Indian Union at the date when the Constitution comes into force as in the Constitution of the Irish Free State and leave the law regarding nationality to be provided for by legislation by the Indian Union in accordance with the accepted principles of Private International Law." (Calcutta Weekly Notes, Vol. LI No. 27, May 26, 1947).

The same journal in two subsequent issues (Vol. LI, Nos. 28 and 29, June 2, and June 9, 1947) has drawn attention to a host of other questions arising out of Clause 2 and on the whole it may be better altogether to omit that clause, leaving the matter at large to be regulated by Federal law under Clause 3).

PART III

FUNDAMENTAL RIGHTS INCLUDING DIRECTIVE PRINCIPLES OF STATE POLICY

1.**Fundamental Rights**:-[Here enumerate the Fundamental rights and principle of State policy as passed by the Constituent Assembly.]

PART IV

CHAPTER I

THE FEDERAL EXECUTIVE

1. **Head of the Federation**.—(1) The Head of the Federation shall be the President (Rashtrapti) to be elected as provided below.

(2) The election shall be by an electoral college consisting of—

(a) the members of both Houses of Parliament of the Federation, and

(b) the members of the Legislatures of all the Units or, where a Legislature is bicameral, the members of the Lower House thereof.

In order to secure uniformity in the scale of representation of the Units, the votes of the Unit Legislatures shall be weighted in proportion to the population of the Units concerned.

Explanation.—A Unit means a Province or Indian State which returns in it 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 and the legislature of the Unit means the Legislatures of all the States in that group.

(3) The election of the President shall be by secret ballot and on the system of proportional representation by means of the single transferable vote.

(4) Subject to the above provisions, elections for the office of President. shall be regulated by Act of Federal Parliament.

[NOTE.—The provision about weighting of the votes according to the population of the Units is necessary to prevent the swamping of the votes of a large Unit by those of a much smaller Unit which may happen to have a relatively large Legislature. The mode of weighting may be illustrated thus: In a Legislature where each legislator represents 1 lakh (100,000) of the population, his vote shall count as equivalent to 100, that is, 1 for each 1,000 of the population: and where the Legislature is such that the legislator represents, 10,000 of the population, his vote shall count as equivalent to 10 to the same scale.]

2. **Term of office of President**.—(1) The President shall hold office for 5 years:

Provided that—

(a) President may by resignation under his hand addressed to the Chairman of the Council of States and the Speaker of the House of the People resign his office;

(b) a President may, for violation of the Constitution, be removed from office by impeachment in the manner provided in sub-clause (2).

(2) When a President is to be impeached for violation of the Constitution, the charge shall be preferred by either House of the Federal Parliament, but no proposal to prefer such charge shall be adopted by that House except upon a resolution of the House supported by not less than two-thirds of the total membership of the House.

(b) When a charge has been so preferred by either House of the Federal Parliament the other House shall investigate the charge or cause the charges to be investigated and the President shall have the right to appear and to be represented at such investigation.

(c) If as a result of the investigation a resolution is passed, supported by not less than two-thirds of the total membership of the House by which the charge was investigated or cause to be investigated declaring that the charge preferred against the President has been sustained, the resolution shall have the effect of removing the President from his office as from the date of the resolution.

(3) A person who holds, or who has held, office as President shall be eligible or re-election once, but only once.

[NOTE.-Sub-clauses (1) (b) and (2) follow Art. 12(10) of the Irish Constitution, sub-clause (3) is also taken from the Irish Constitution.]

3. **Age qualification**.—Every citizen of the Federation who has completed the age of thirty-five years and is qualified for election as a member of the House of the People shall be eligible for election as President.

[NOTE.—This follows Art II, Section 1(5), of the Constitution of the U.S.A. and Article 12(4) of the Irish Constitution.]

4. **Conditions of President's Office**.—(1) The President shall not be a member of either House of the Federal Parliament and if a member of either House be elected President, he shall be deemed to have vacated his seat in that House.

(2) The President shall not hold any other office position of emolument.

(3) The President shall have an official residence and shall receive such emoluments and allowances. As may be determined by Act of the Federal Parliament and until then, such as are prescribed in Schedule.

(4) The emoluments and allowances of the President shall not be diminshed during his term of office.

[NOTE—These follow the provisions of Articles 12(6) and (11) of the Irish Constitution.]

5. **Casual vacancies and procedure at elections**.—Appropriate provision should be made for elections to fill casual vacancies, the detailed procedure for all elections, whether casual or not being left to be regulated by Act of the Federal Parliament:

Provided that—

(a) an election to fill a casual vacancy shall be held as soon as possible after and in no case later than six months from, the date of occurrence of the vacancy; and

(b) the person elected as President at an election to fill a casual vacancy shall be entitled to hold office for the full term of five years.

6. **Vice-President**.—(1) In the event of the absence of the President or of his death, resignation, removal from office, or incapacity or failure to exercise and perform the powers and functions of his office or at any time at which the office of the President may be vacant, his functions shall be discharged by the Vice-President pending the resumption by the President of his duties or the election of a new President, as the case may be.

(2) The Vice-President shall be elected by both Houses of the Federal Parliament in joint session by secret ballot on the system of proportional representation by means of the single transferable vote and shall be *ex-officio* President of the Council of States.

(3) The Vice-President shall hold office for five years.

7. Functions of the President.—(1) Subject to the provisions of this Constitution the executive authority of the Federation shall be vested in the President.

(2) Without prejudice to the generality of the foregoing provision—

(a) the supreme command of the defence forces of the Federation shall be vested in the President;

(b) the right of pardon and the power to commute or to remit punishment imposed by any court exercising criminal jurisdiction shall be vested in the President, *but such power of commutation or remission may also be conferred by law on other authorities*.

[NOTE.—The italicized words in sub-clause 2(b) are necessary, because of the provisions of the Criminal Procedure Code, which, in this respect, will probably continue to be in force even after the commencement of the new Constitution. Similar limiting words occur in the Irish Constitution also.]

8. Extent of executive authority of the Federation.—Subject to the provisions of this Constitution, the executive authority of the Federation shall extend to the matters with respect to which the Federal Parliament has power to make laws and to any other matters with respect to which authority has been conferred the Federation by any treaty or agreement, and shall the exercised either through its own agency or through the Units.

9. The executive authority of the Ruler of a Federated State shall continue to be exercisable in that State with respect to Federal subjects, until otherwise provided by the appropriate Federal authority.

[NOTE.—Like the corresponding provision in section 8(2) of the Act of 1953 this clause gives the Rulers of Indian States, who have acceded to the Federation, concurrent executive power even in Federal subjects, until otherwise provided by Federal authority. (In this respect, the position of the Provincial units is rather different: these have no executive power in respect of Federal subjects save as given by Federal law.) Such a clause is necessary, for otherwise, all statutory powers in respect of Federal subjects will come to an end in the acceding States upon the commencement of this Constitution.]

10. Council of Ministers.—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.

11. Advocate-General for the Federation.—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 Federal Government upon legal matters that may be referred to him.

12. Conduct of business of the Federal Government.—All executive action of the Federal Government shall be expressed to be taken in the name of the President.

CHAPTER II
THE FEDERAL PARLIAMENT

13. Constitution of the Federal Parliament.—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.

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 one representative for every whole million of the population of the Unit upto five million *plus* one representative for every additional two million 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 750,000 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.

(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, as 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.

[NOTE. Taking into account only the "willing" Provinces, this clause gives the Council of States a maximum strength of about 200 members and the House of the People a maximum strength of between 300 and 400 members. The following tabular statement will serve to give a general picture of the composition of the Upper House under the above scheme. (The composition of the Lower House will be on a purely population basis.)]

COUNCIL OF STATES

Provinces

Madras	20
Bombay	12
Bengal (W)	12
U.P.	20
Punjab (E)	9
Bihar	20
C.P.	10
Assam	7
Orissa	6
Total	116

States

Hyderabad	10
Mysore	6
Travancore	5
Baroda	3
Gwalior	4
Jaipur	3
Kashmir	4
Jodhpur	2
Udaipur	2
Patiala	2
Rewa	2
Cochin	1
Bikaner	1
Kolhapur	1
Indore	1
	47
For the groups of the remaining States whose population individually does not amount to one million.	24
Total	71

15. 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 amend-

ments 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 reconsideration within a period of six months.

16. Language.—In the Federal Parliament, business shall be transacted in Hindustani (Hindi or Urdu) or English, provided that the Chairman or the Speaker, as the case may be, may permit any member who cannot adequately express himself in either language to address the House in his mother tongue. The Chairman or the Speaker, as the case may be, shall make arrangements for giving the House, whenever he thinks fit, a summary of the speech in a language other than that used by the member and such summary shall be included in the record of the proceedings of the House.

[NOTE.—This follows the corresponding provision in the Constituent Assembly Rules.]

CHAPTER III

LEGISLATIVE POWERS OF THE PRESIDENT

17. Power of President to promulgate ordinances during recess of Parliament.—(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.

(2) An ordinance promulgated under this section shall have the same face 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 Federal Parliament, or, if before the expiration of that period resolutions disapproving 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.

[NOTE.—The ordinance-making power has been the subject of great criticism under the present Constitution. It must however be pointed out that circumstances may exist where the immediate promulgation of a law is absolutely necessary and there is no time in which to summon the Federal Parliament. In 1925, Lord Reading found it necessary to make an ordinance suspending the cotton excise duty when such action was immediately and imperatively required in the interests of the country. A democratically elected President who has moreover to act on the advice of ministers responsible to Parliament is not at all likely to abuse any ordinance-making power with which he may be invested. Hence the proposed provision.]

CHAPTER IV
THE FEDERAL JUDICATURE

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

[NOTE.—The *ad hoc* Committee* on the Supreme Court has observed that it will not be expedient to leave the power of appointing judges of the Supreme Court to the unfettered discretion of the President of the Federation. They have suggested two alternatives, both of which involve the setting up of a special panel of eleven members. According to one alternative, the President, in consultation with the Chief Justice, is to nominate a person for appointment as puisne judge and the nomination has to be confirmed by at least seven members of the panel. According to the other alternative the panel should recommend three names, out of which the President, in consultation with the Chief Justice, is to select one for the appointment. The provision suggested in the above clause follows the decision of the Union Constitution Committee.]

CHAPTER V
AUDITOR-GENERAL OF THE FEDERATION

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

20. Functions of Auditor-General.—The duties and powers of the Auditor-General shall follow the lines of the corresponding provisions in the Act of 1935.

CHAPTER VI
SERVICES

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

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

CHAPTER VII
ELECTIONS

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

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

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*For Committee's Report *see* Appendix.

PART V

DISTRIBUTION OF LEGISLATIVE POWERS BETWEEN THE FEDERATION AND THE UNITS

The provisions to be inserted under this head will depend upon the decisions that may be taken upon the report of the Union Powers Committee. The Union Constitution Committee has, however, decided that—

(1) the Constitution should be a Federal structure with a strong Centre;

(2) there should be three exhaustive legislative lists, *viz*., Federal Provincial and Concurrent, with residuary powers to the Centre;

(3) the State should be on a par with the Provinces as regards the Federal Legislative list subject to the consideration of any special matter which may be raised when the lists have been fully prepared.

PART VI

ADMINISTRATIVE RELATIONS BETWEEN THE FEDERATION AND THE UNITS

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

2. The authority of the Federal Government will also extend to the executive power and authority in so far as it is necessary and applicable for the purpose as to secure that due effect is given within the Unit to every Act of the Federal Parliament which applies to that Unit; and the authority of the Federal Government will extend to the giving of directions to a Unit Government to that end.

3. The authority of the Federal Government will also extend to the giving of directions to the Unit Government as to the manner in which the latter's executive power and authority should be exercised in relation to any matter which affects the administration of a Federal subject.

[NOTE—C*f*. Section. 122, 124 and 126 of the Government of India Act, 1935.]

PART VII

FINANCE AND BORROWING POWERS

1. Revenues derived from sources in respect of which the Federal Parliament has exclusive power to make laws will be allocated as Federal revenues but in the cases specified in the next succeeding paragraph the Federation will be empowered or required to make assignments to Units from Federal revenues.

2. Provision should be made for the levy and, if necessary, distribution of the following taxes, *viz*., customs, Federal excises, export duties, death duties and taxes on income other than agricultural income and taxes on companies.

3. The Federal Government will have power to make subventions or grants out of the Federal revenues for any purpose, notwithstanding that the purpose is not one with respect to which the Federal Parliament may make laws.

4. The Federal Government will have power to borrow for any of the purposes of the Federation upon the security of Federal revenues subject to such limitations and conditions as may be fixed by Federal law.

5. The Federal Government will have power to grant a loan to, or guarantee a loan by, any Unit of the Federation on such terms and under such conditions as it may prescribe.

[NOTE.—C*f.* Sections 136 to 140, 162 and 163(2) of the Government of India Act, 1935.]

PART VIII

DIRECTLY ADMINISTERED AREAS

1. The Chief Commissioner's Provinces should continue to be administered by the Centre as under the Government of India Act, 1935, as an interim measure, the question of any change in the system being considered subsequently, and all centrally administered areas including the Andaman and the Nicobar Islands should be specifically mentioned in the Constitution.

2. Appropriate provision should be made in the Constitution for the administration of tribal areas.

[NOTE.—The provision to be made regarding tribal areas should incorporate the scheme for the administration of such areas as approved by the Constituent Assembly on the report of the Advisory Committee.]

PART IX

MISCELLANEOUS

The provisions for the protection of minorities as approved by the Constituent Assembly on the report of the Advisory Committee should be incorporated in the Constitution.

PART X

AMENDMENT OF THE CONSTITUTION

An amendment to the Constitution may be initiated in either House of the Federal Parliament and when the proposed amendment is passed in each House by a majority of not less than two-thirds of the members of that House present and voting and is ratified by the legislatures of not less than half of the Units of the Federation, it shall be presented to the President for his assent; and upon such assent being given, the amendment shall come into operation.

Explanation—"Unit" in this clause has the same meaning as in Clause 14 of Part IV. Where a Unit consists of a group of States, a proposed amendment shall be deemed to be ratified by the legislature of the Unit, if it is ratified by the majority of the legislatures of the States in the Group.

PART XI

TRANSITIONAL PROVISIONS

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

[If, before the commencement of this Constitution, two successor Governments should be set up in India, this clause may have to be amended, in as much as there may be a division of assets and liabilities.]

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

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

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

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

4. Excepting holders of the offices specified in Schedule—every person who immediately before the date of the commencement of this Constitution, was in the service of the Crown in India, including any judge of the Federal Court or of any High Court, shall, on that date be transferred to the appropriate service of the Federation or the Unit concerned and shall hold office by a tenure corresponding to his previous tenure.

[NOTE.—Under the next succeeding clause there will be a provisional President from the commencement of the new Constitution, so that there will be no room for a Governor-General. Similarly, in the Provinces there will be no room for any Governor appointed by His Majesty. The same may be true of the holders of certain other offices. All such offices may be enumerated in a Schedule. The proposed provision applies to persons holding office other than those mentioned in the Schedule. *Cf.* Article 77 of the Transitory Provisions of the Constitution of the Irish Free State, 1922, reproduced below:—

"Every existing officer of the Provisional Government at the date of the coming into operation of this Constitution (not being an officer whose services have been lent by the British Government to the Provisional Government) shall on that date be transferred to and become an officer of the Irish Free State (Saorstat Eireann) and shall hold office by a tenure corresponding to his previous tenure."]

5. (1) Until both the Houses of the National Assembly have been duly constituted and summoned under this Constitution, the Constituent Assembly shall itself exercise all the powers and discharge all the duties of both the Houses.

Explanation.—For the purposes of this sub-clause, the Constituent Assembly shall not include any members representing territories not included in Schedule I.

(2) Such person as the Constituent Assembly shall have elected in this behalf shall be the provisional President of the Federation until a President has been elected as provided in Part IV of this Constitution.

(3) Such persons as shall have been appointed in this behalf by the provisional President shall be the provisional council of ministers until ministers are duly appointed as provided in Part IV of this Constitution.

[NOTE.—It is essential that on the date of commencement of this Constitution there should be a Legislature and an Executive ready to take over power. The most practicable course is that the Constituent Assembly should itself be the provisional Legislature. The clause regarding the provisional Executive is consequential. These provisions may however require modification after the passing of the new Dominion Act amending the Government of India Act, 1935.]

6. As there may be unforeseen difficulties during the transitional period, there should be a clause in the Constitution on the following lines:—

The Federal Parliament may, notwithstanding anything contained in Part X, by Act.—

(a) direct that this Constitution, except the provisions of the said Part and of this clause, shall, during such period, if any, as may be specified in the Act, have effect subject to such adaptations and notifications as may be so specified;

(b) make such other provisions for the purpose of removing any such difficulties as aforesaid as may be specified in the Act.

No Act shall be made under this clause after the expiration of three years from the commencement of this Constitution.

[NOTE.—The-removal-of-difficulties-clause is now quite usual: see, for example, section 310 of the Government of India Act. 1935. The period of three years has been borrowed from Article 51 of the Irish Constitution. This clause will make the process of amendment comparatively easy during the first three years.

CONSTITUENT ASSEMBLY

ad hoc **Committee on Supreme Court**

We, the undersigned members of the Committee appointed to consider the Constitution and powers of the Supreme Court have the honour to submit this our report.

2. We considered the question under the following heads:

I. Jurisdiction and powers of the Supreme Court.

II. Advisory jurisdiction of the Court.

III. Ancillary powers of the Court.

IV. Constitution and strength of the Court.

V. Qualifications and mode of appointment of judges.

VI. Tenure of office and conditions of service of judges.

I. JURISDICTION AND POWERS OF THE SUPREME COURT

3. A Supreme Court with jurisdiction to decide upon the constitutional validity of acts and laws can be regarded as a necessary implication of any federal scheme. This jurisdiction need not however belong exclusively to the Supreme Court. Even under the existing Indian Constitution, the question of the validity of acts and laws is permitted to be raised in any court whenever that question arises in a litigation before that court.

4. A Supreme Court for certain purposes being thus a necessity, we consider that the Court may well be given the following additional powers under the new Indian Constitution:—

(a) *Exclusive jurisdiction in disputes between the Union and a Unit or between one Unit and another*

5. The Supreme Court is the best available *forum*—for the adjudication of such disputes, and its jurisdiction should be exclusive.

(b) *Jurisdiction with respect to matters arising out of treaties made by the Union*

6. The treaty-making powers belongs to the Union as part of the subject of 'Foreign Affairs'. It would therefore be appropriate to invest

the Supreme Court of the Union with jurisdiction to decide finally, though not necessarily in the first instance, upon all matters arising out of treaties including extradition between the Union and a foreign State. At this stage we do not deal with inter-unit extradition, because this will depend upon the ultimate distribution of powers between the Union and the Units.

(c) *Jurisdiction in respect of such other matters within the competence of the Union as the Union Legislature may prescribe*

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

(d) *Jurisdiction for the purpose of enforcing the fundamental rights guaranteed by the Constitution*

8. Clause 22 of the draft the Fundamental Rights provides that the right to move the Supreme Court by appropriate proceedings for the enforcement of fundamental rights is guaranteed. We think however, that it is undersirable to make the jurisdiction of the Supreme Court in such matters exclusive. The citizen will practically be denied these fundamental rights if, whenever they are violated, he is compelled to seek the assistance of the Supreme Court as the only Court from which he can obtain redress. Where there is no other Court with the necessary jurisdiction, the Supreme Court should have it; where there is some other Court with the necessary jurisdiction, the Supreme Court should have appellate jurisdiction, including powers of revision.

(e) *General appellate jurisdiction similar to that now exercised by the Privy Council*

9. Under the new Constitution the jurisdiction of the Privy Council as the ultimate appellate authority will disappear and it is obviously desirable that a similar jurisdiction should now be conferred on the Supreme Court. So far as the British Indian Units are concerned, this jurisdiction should be co-extensive with the present jurisdiction of the Privy Council. As regards the Indian State units, there are at least two clases of cases where, in the interests of uniformity, it is clearly desirable that the final decision should rest with the Supreme Court, namely:

(1) cases involving the interpretation of a law of the Union, and

(2) cases involving the interpretation of a law of a Unit other than the State concerned.

Sir B. L. Mitter suggests that such uniformity can be obtained either by invoking the appellate authority of the Supreme Court or by a reference of the particular issue to the Supreme Court. Cases involving the constitutional validity of a law of the Union or of any Unit have already been dealt with; they will all necessarily fall within the Supreme Court's jurisdiction.

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

II. ADVISORY JURISDICTION OF THE COURT

11. There has been considerable difference of opinion amongst jurists and political thinkers as to the expediency of placing on the Supreme Court an obligation to advise the Head of the State on difficult questions

of law. In spite of arguments to the contrary, it was considered expedient to confer advisory jurisdiction upon the Federal Court under the existing Constitution by Section 213 of the Act. Having given our best consideration to the arguments pros and cons, we feel that it will be on the whole better to continue this jurisdiction even under the new Constitution. It may be assumed that such jurisdiction is scarcely likely to be unnecessarily invoked and if, as we propose, the Court is to have a strength of ten or eleven judges, a pronouncement by a full Court may well be regarded as authoritative advice. This can be ensured by requiring that references to the Supreme Court for advice shall be dealt with by a full Court.

III. Ancillary Powers of the Court

12. Power should be conferred upon the Supreme Court as under section 14 of the Act 1935 to make rules of procedure to regulate its work and provisions similar to those contained in Order 45 of the Civil Procedure Code should be made available so as to facilitate the preparation of the record in appeals to the Supreme Court as well as the execution of its decrees. It does not seem to us necessary to continue the restriction now placed on the Federal Court by section 209 of the Act of 1935. If the Supreme Court takes the place of the Privy Council, it may well be permitted to pronounce final judgements and final decrees in cases where this is possible or to remit the matter for further inquiry to the Courts from which the appeal has been preferred where such further inquiry is considered necessary. Provision must also be made on the lines of section 210 of the Act of 1935 giving certain inherent powers to the Supreme Court.

IV. Constitution and Strength of the Court

13. We think that the Supreme Court will require at least two Division. Benches and as we think that each Division Bench should consist of five judges, the Court will require ten judges in addition to the Chief Justice, so as to provide for possible absences or other unforeseen circumstances. Moreover, one of the judges may be required to deal with many miscellaneous matters incidental to appellate jurisdiction (including revisional and referential jurisdiction).

V. Qualifications and Mode of Appointment of Judges

14. The qualifications of the judges of the Supreme Court may be laid down on terms very similar to those in the Act of 1935 as regards the judges of the Federal Court, the possibility being borne in mind (as in the Act of 1935) that judges of the superior courts even from the States which may join the Union may be found fit to occupy a seat in the Supreme Court. We do not think that it will be expedient to leave the power of appointing judges of the Supreme Court to the unfettered discretion of the President of the Union. We recommend that either of the following methods may be adopted. On method is that the President should in consultation with the Chief Justice of the Supreme Court (so far, as the appointment of puisne judges is concerned) nominate a person whom he considers fit to be appointed to the Supreme Court and the nomination should be confirmed by a majority of at least 7 out of a panel of 11 composed of some of the Chief Justice of the High Courts of the constituent units, some members of both the Houses of the Central Legislature and some of the law officers of the Union. The other method is that the panel of 11 should recommend three names out of which the President, in consultation with the Chief Justice, may select a judge for the appointment. The same procedure should be followed for the appointment of the Chief Justice except of course that in this case there will be no consultation with the Chief Justice. To ensure that the panel will be both independent command confidence the panel should not be an *ad hoc* body but must be one appointed for a term of years.

VI. TENURE OF OFFICE AND CONDITIONS OF SERVICE OF JUDGES

15. The tenure of office of the judges of the Supreme Court will be the same as that of Federal Court judges under the present Constitution Act and their age of retirement also may be the same (65). Their salary and pensions may be provided for by statutory rules. It is undesirable to have temporary judges in the highest Court in the land. Instead of having temporary judges, the system of having some *ad hoc* judges out of a panel of Chief Justices or judges of the High Courts may be adopted. In this connection we invite attention to the Canadian practice as embodied in section 30 of the Canadian Supreme Court Act. The section runs as follows:—

"30. *Appointment of* ad hoc *'judge*.—If at any time there should not be a quorum of the judges of the Supreme Court available to hold or continue any session of the Court, owing to a vacancy or vacancies, or to the absence through illness or on leave or in the discharge of other duties assigned by statute or order in council, or to the disqualification of a judge or judges, the Chief Justice, or, in his absence, the senior puisne judge, may in writing request the attendance at the sittings of the Court, as an *ad hoc* judge, for such period as may be necessary of a judge of them Exchequer Court or, should the Judges of the said court be absent from Ottawa or for any reason unable to sit of a judge of a provincial superior court to be designated in writing by the Chief Justice or in his absence by any Acting Chief Justice or the senior puisne judge of such provincial court upon such request being made to him in writing.

* * * * * * * * *

4. *Duties*.—It shall be the duty of the judge whose attendance has been so requested or who has been so designated in priority to other duties of his office, to attend the sittings of the supreme Court at the time and for the period for which his attendance shall be required, and while so attending he shall possess the powers and privileges and shall discharge the duties of a puisne Judge of the Supreme Court."

16. Not all the recommendations that we have made need find a place in the Constitution Act. The main features may be embodied in the Constitution Act and detailed provisions in a separate Judiciary Act to be passed by the Union Legislature. The form of procedure in the Supreme Court. *e.g.*, for the enforcement of fundamental nights may also be provided for in the Judiciary Act. We may point out that the prerogative writs of mandamus, prohibition and *certiorari* have been abolished in England by a statute of 1938. Corresponding orders have been substituted and the Supreme Court of Judicature has been empowered to make rules of court prescribing the procedure in cases where such orders are sought [*See* section 7—10 of the Administration of Justice (Miscellaneous Provisions) Act, 1938].

17. We understand our terms of reference to relate only to the constitution and powers of the Supreme Court. We have, therefore, said nothing about the High Courts of the Units, although we have had to refer to them incidentally in some of our suggestions relating to the Supreme Court.

New Delhi. May 21, 1947

1. S. Varadachariar.
2. A. Krishnaswami Ayyar.
3. B. L. Mitter.
4. K. M. Munshi.
5. B. N. Rau.

CONFIDENTIAL

APPENDIX 'B'

No. CA/63/Cons./47

CONSTITUENT ASSEMBLY OF INDIA

COUNCIL HOUSE,

New Delhi, the 13th July 1947.

FROM

PANDIT JAWAHARLAL NEHRU,

CHAIRMAN, UNION CONSTITUTION COMMITTEE.

TO

THE PRESIDENT,

CONSTITUENT ASSEMBLY OF INDIA.

DEAR SIR,

1. On behalf of the members of the Committee appointed by you in pursuance of the resolution of the Constituent Assembly of the 30th April 1947, I submitted a memorandum embodying the recommendations of the Committee.

2. The Committee met again on the 12th July 1947 and decided on certain modifications to be made in the said memorandum. I have the honour to submit this supplementary report containing these recommendations.

3. In the opinion of the Committee, clause 3 of the memorandum should contain the following additional sub-clause to enable the Federal Parliament to alter the name of any Unit, namely:—

"(e) alter the name of any Unit."

4. The Committee is of opinion that the following should be added to sub-clause (2) of clause 6 of Chapter I of Part IV of the memorandum to make it clear that if a member of the Council of States is elected as Vice-President he shall vacate his seat as such member, namely:—

"and if a member of the Federal Parliament is elected to be the Vice-President, he shall vacate his seat as such member."

5. The Committee is further of the opinion that Part X of the memorandum on the Indian Constitution should be replaced by the following:—

PART X

AMENDMENT OF THE CONSTITUTION

The amendment of the Constitution may be initiated in either House of the Federal Parliament and when the proposed amendment is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President for his assent; and upon such assent being given the amendment shall come into operation:

Provided that if such amendment is in respect of any provision of the Constitution relating to all or any of the following matters, namely:—

(a) any change in the Federal Legislative List,

(b) representation of Units in the Federal Parliament, and

(c) powers of the Supreme Court,

it will also require to be ratified by the legislatures of Units representing a majority of the population of all the Units of the Federation in which Units representing at least one-third of the population of the Federal States are included.

Explanation.—"Unit" in this clause has the same meaning as in Clause 14 of Part IV. Where a Unit consists of a group of States, a proposed amendment shall be deemed to be ratified by the legislature of the Unit, if it is ratified by the majority of the legislatures of the States in the Groups."

Yours sincerely,

JAWAHARLAL NEHRU.