

Friday, 18th July, 1947

Volume IV



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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

Friday, the 18th July 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at 3 p.m., Mr. President (The Hon'ble Dr. Rajendra Prasad) in the Chair.

PRESENTATION OF CREDENTIALS AND SIGNING OF THE REGISTER

The following Member presented his Credentials and signed the Register :

Dr. Raghunandan Prasad (Bihar: General).

REPORT ON THE PRINCIPLES OF A MODEL PROVINCIAL CONSTITUTION-*Contd.*

Mr. President: The House will now proceed with the consideration of Clause 8 which was passed over yesterday.

Mr. H. J. Khandekar (C. P. and Berar: General): *[Mr. President, Guru Agam Das, one of the members of C.P., is a member of the Constituent Assembly. He has not received the notice of this session as yet. The reason is that the address which has been given in the list is wrong. He lives in Raipur District, but Bilaspur District has been mentioned in the list. He has not received the letter by now.

I would request the President to issue him the notice of this session by telegram.]*

Sir B. L. Mitter (Baroda State): Mr. President, you appointed a Committee to examine Clause 8 of the Provincial Constitution. The Committee have unanimously made a Report⁺ and they have re-drafted that clause in these terms :

“It shall be competent for a Province, with the previous sanction of the Federal Government, to undertake, by an agreement made in that behalf with any Indian State, any legislative, executive or Judicial functions vested in that State, provided that the agreement relates to a subject included in the Provincial or Concurrent Legislative List.

On such an agreement being concluded, the Province may, subject to the terms thereof, exercise the legislative, executive or judicial functions specified therein through the appropriate authorities of the Province.”

*[]*English translation of Hindustani speech.

⁺Appendix.

[Sir Brajendra Lal Mitter]

Sir, I will say a few words in explanation. It is well-known that the authority of a provincial government, whether executive, Judicial or legislative, cannot extend beyond the boundaries of the province; that is to say there is no extra-territorial authority vested in any province. This clause gives a province extra-territorial jurisdiction by agreement with a State. The reason for it is this: Suppose a very backward State adjoining a province has some executive or judicial functions but has no machinery to exercise those functions. Then it can come to an agreement with a neighbouring province so that the machinery of the neighbouring province may be available to that backward State for the benefit of both. But it may be that such an agreement, if made between two parties, may act prejudicially to a third State or a third Province, and in order to safeguard against that possible risk, the words "with the previous sanction of the Federal Government" have been inserted, so that the Federal Government will know that here is an agreement between a province and a State and that the agreement is beneficial to both and injurious to none, before the Federal Government gives its sanction to the agreement. By this draft the authority of a province is extended beyond its territorial jurisdiction. The redraft has been necessary by reason of some objections raised by Sir Alladi Krishnaswami Ayyar which were found to be valid objections. I hope this redraft avoids all ambiguities. Sir, I move.

Mr. President: Does anyone wish to say anything about this clause?

Sir Alladi Krishnaswami Ayyar (Madras: General): I gave notice of an amendment.

Mr. President: There is an amendment by Mr. Gupte to be moved, I will give you an opportunity, Sir Alladi.

Mr. B. M. Gupte (Bombay: General): I beg to move that the following new clause.....

Mr. President: Sir Alladi Krishnaswami Ayyar, you wanted to speak about the resolution. I thought Mr. Gupte's was an amendment but it is altogether a new proposition.

Sir Alladi Krishnaswami Ayyar: Mr. President, Sir, in supporting this amendment, I just want to make a few observations. I gave notice of an amendment substantially in these terms. The Committee that was appointed by this House was pleased to substantially adopt that amendment with the modification that the consent of the Central Government should be obtained. Now, as this House is aware, there are quite a large number of minor or small States spread over India which may find it difficult to provide adequate or efficient machinery for the exercise of certain administrative or judicial functions. So, in the interests of both economy and efficiency, it is but fit and proper to provide that the neighbouring provinces should be in a position to undertake the exercise of certain administrative and judicial functions of these States under arrangements entered into with them and to give legal sanction to such arrangements. From the very nature of things, the provinces can not undertake functions different from the normal functions vested in them as units of the Indian Union. Accordingly, the clause provides for the exercise only of functions vested in the provinces under the Provincial and Concurrent list. In view of the importance of the task undertaken and the relation of the provinces to the Indian Union, provision is made for obtaining the previous sanction of the Union Government. It is hoped that when the Constitution is finally settled, the Union Constitution may also provide for the government of the federation exercising plenary jurisdiction in territories ceded to, or coming under the

control of, the Union Government, similar to the jurisdiction exercised by the agencies of the British Crown under the British Foreign Jurisdiction Act. The provision now inserted is, of course, without prejudice to any such general provision being made.

I might mention, Sir, that some suggestion has been made in certain quarters that provision may also be made for provinces ceding jurisdiction to the States. We are not dealing with States constitution, but when the States come into the Union, in regard to any outlying tracts I have no doubt that this Assembly will favourably consider any such suggestion and see if it is possible to concede any jurisdiction in regard to any outlying tracts in favour of States which are in a position to undertake that responsibility.

With these words, I beg to support the resolution before the House moved by my Honourable friend, Sir B. L. Mitter.

Mr. A. P. Pattani (Western India States Group): Mr. President, Sir, I was not able to hear quite clearly what the Honourable Member said but I understood him to say that outlying tracts of British Indian territory falling within the area of an Indian State should similarly come under the jurisdiction of that State with the permission of the Central Government. Such acquiring of jurisdiction should not be only one-sided. I believe there will be in time to come during the discussions, over the federal constitution something in the shape of a constitution for groups of States, but part from that what I wish to say now is that it should be possible for a State which is able to exercise functions on behalf of a province to obtain those powers under agreement with a provincial government and with the consent of the federal authority.

Sir B. L. Mitter: Mr. President ; this question of reciprocal arrangement between a province and a state was considered by the committee appointed by you and the committee came to the conclusion that since they were dealing with the provincial constitution, jurisdiction of States would be inappropriate in that place. It was decided that we should say nothing about the reciprocal arrangement at this stage. Then the question arises at what stage or in what place this reciprocal arrangement could be made. Well, there may be various answers. If any acceding States are intended to be given extra-territorial jurisdiction over any tract which is now British India, then by means of a similar clause, that is with the consent of the Union Government, an arrangement may be made between a State and a province giving the State extra-territorial jurisdiction over that tract. The State itself in its own legislature may make such law. This point has not been over-looked and I hope this House will agree to a reciprocal arrangement being made in favour of a state as it is now asked to make in favour of a Province.

Mr. President: The question is that Clause 8 be redrafted as follows:

“8. It shall be competent—for a province, with the previous sanction of the Federal Government, to undertake by an agreement made in that behalf with any Indian State, any legislative, executive or judicial functions vested that State, provided that the agreement relates to a subject included in the Provincial or Concurrent Legislative List.

On such an agreement being concluded, the Province may, subject to, the terms thereof exercise the legislative, executive, or judicial functions specified therein through the appropriate authorities of the Province.”

The motion was adopted.

Mr. B. M. Gupte : Sir, I beg to move that the following new clause be added after Clause 8 as proposed by the *ad hoc* Committee appointed to redraft the clause.

“8-A. Subject to the provisions of the Constitution, and of any special agreement referred to in Clause 8, the executive authority of each Province, shall extend to the matters, with respect to which the Provincial Legislature has power to make laws.”

The *ad hoc* Committee that was appointed to redraft this clause has put forward its report and we have just adopted that clause as clause 8 as redrafted by the Committee. The original clause 8 referred to ‘executive authority’, but unfortunately through oversight the redraft failed to incorporate that portion of it as it stood originally. Therefore my amendment supplies that deficiency. The redraft as it is now passed refers only to the special agreement; while this new clause includes the executive authority of the province. I therefore command my amendment for acceptance; because it actually supplies only a deficiency acceptable to the Committee and, I am sure, the Mover.

The Honourable Sardar Vallabhbhai Patel (Bombay: General): I accept the amendment moved by Sir B. L. Mitter and the addition moved by Mr. B. M. Gupte because in the original clause there was a reference to agreement which now has been specified by the amendment of Sir B. L. Mitter, But the original clause must remain. Therefore Mr. Gupte has moved that the additional clause may be added after Sir B. L. Mitter’s amendment. Therefore, I accept Sir B. L. Mitter’s amendment as added to by Mr. Gupte.

Mr. President : Does anyone wish to speak about the amendment to this clause moved by Mr. Gupte?

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, I do not think this amendment is necessary. The matter should, if necessary, be inserted in the Provincial or Concurrent Legislative Lists. To the extent as may be provided in this Legislative List the authority of the province regarding legislative and executive action would be complete. If there is any lacuna here, it is a matter for amendment of the Legislative Lists. There is no need, in my humble judgment to adopt a clause like this. I only make this submission to the House so that the same may be considered, and if necessary, it may be passed, but if unnecessary, it should not be passed.

The Honourable Sir N. Gopaldaswami Ayyangar (Madras: General): It seems to me, Sir, that a word of explanation is necessary, particularly with reference to the remarks made by the last speaker. He seemed to think that this amendment which has been numbered as Clause 8-A would be unnecessary. I should say, Sir, on the contrary it is very necessary for this reason. We no doubt distinguish between the powers of the federation and of the units in the constitution. Those powers refer only to legislative powers. Legislative powers are divided between the Centre and the units but we have got also to define the scope of the executive authority of the province. We shall define it in the case of the federation also. Unless we say that the executive authority of the province will, subject to the exception mentioned here, be co-extensive with the legislative authority of the province, we shall, not be indicating how far executive action can go at all. I therefore think, Sir, that it is a very necessary amendment.

Sir B. L. Mitter: Sir, I think there is a certain amount of confusion in the minds of some members. When I said that we had re-drafted this clause, that re-draft refers to the extra-territorial part of the jurisdiction. But the main clause deals with the normal territorial extent of provincial jurisdiction. You must say somewhere in the constitution on what matters or within what territorial limits the provincial government has to function. Clause 8 says:—"Subject to the provisions of this constitution and of any special agreement, the executive authority of each province shall extend to the matters with respect to which the Provincial Legislature has power to make laws". Now, we know that under the 1935 Act, the provincial jurisdiction extends over the provincial list and the concurrent list and not on the federal list. Here also it is said, "with respect to which the Provincial Legislature has power to make laws". That is so far as the subject matter jurisdiction is concerned. There must be some territorial jurisdiction also. It is stated that the territorial jurisdiction of the executive power is coterminous with that of legislative power. We have to have territorial limits of provincial jurisdiction as well as subject jurisdiction. Therefore, this is necessary. What I moved in the first instance was with regard to the extra-territorial jurisdiction of a province. Therefore, I submit, Sir, that it is necessary to have Clause 8 as printed, in the constitution.

Mr. President: I do not know if there was any misunderstanding in the minds of the members when the clause was put to vote. I take it that what Sir B. L. Mitter means is that the clause as it stood in the original should remain there and what he has moved today must be added to it. All the three clause are to remain.

Gupte wants to replace the original Clause 8? I see.

I will put the clause just now moved by Mr. Gupte to vote.

Clause 8-A was adopted.

Mr. President: We will now pass on to Chapter II. We left over Clause 15. Are we ready ?

The Honourable Sardar Vallabhbhai Patel: No.

Mr. President: We will then go on with Chapter II—Rule 19.

CHAPTER II—RULE 19

The Honourable Sardar Vallabhbhai Patel: I move:

"19. (1) There shall for every province be a Provincial Legislature which will consist of the Governor and the Legislative Assembly; in the following provinces, there shall, in addition, be a Legislative Council."

I would suggest, Sir, that so far as the Upper House is concerned, we shall have to consult the leaders of the Provinces to settle amongst themselves as to what provinces require a Second Chamber and request you, Sir, to appoint a Committee of the Provincial Premiers to meet and give us a list so that the list may be added hereto.

"(2) The representation of the different territorial constituencies in the Legislative Assembly shall be on the basis of population and shall be on a scale of not more than one representative for every lakh of the population, subject to a minimum of 50 for any province.

The election to the Legislative Assembly shall be on the basis of adult suffrage, an adult being a person of not less than 21 years of age.

(3) Every Legislative Assembly of every province, unless sooner dissolved shall continue for four years from the date appointed for its first meeting.

[Sardar Vallabhbhai Patel]

(4) In any Province where the Legislature has an Upper House, the composition of that House shall be as follows :

- (a) The total numerical strength of the Upper House should not exceed 25 per cent. of that of the Lower House.
- (b) There should be within certain limits functional representation in the Upper House on the lines of the Irish Constitution the distribution being as follows:
 - One-half to be elected by functional representation on the Irish model;
 - One-third to be elected by the Lower House by proportional representation;
 - One-sixth to be nominated by the Governor on the advice of his Ministers."

I move this clause for the acceptance of the House. We have decided that there shall be a Legislative Assembly for every province and wherever there is to be a bicameral system, the provinces will give a list which will be attached here. At present, as you all know, there are about five or six provinces in which there is only one House such as Orissa, Punjab, Sind and the N. W. Frontier. In the other provinces there are two Houses. Now, the provinces of Bengal and the Punjab have been divided. It is a question whether in the small provinces or whether in Bengal when divided, we want an Upper House. We are concerned with West Bengal alone. It appears there is a big European representation which from August 15 will disappear.

The representation of the different territorial constituencies will be on a scale of not more than one representative for every lakh of the population. This may perhaps in some provinces be increased; where the Provinces are smaller, this proportion will be less. Therefore, we have fixed a minimum. A suggestion may be made for fixing a maximum also. Now, elections are to be held on the basis of adult franchise. We have already settled about that and the age limit is also fixed as 21 years. The life of the Legislature will be four years.

Wherever there is an Upper House, we have adopted the Irish model for the composition of the members; a proportion shall be by functional representation; one-half to be elected by such representation, one-third to be elected by the Lower House by proportional representation and one-sixth to be nominated by the Governor on the advice of his Ministers.

I move this proposition for the acceptance of the House.

Mr. President: I have got notice of a number of amendments. I request the members to move them one by one.

(Messrs. K. Santhanam, P. Kakkan and H. J. Khandekar (did not move their amendments.)

Saiyid Muhammad Saadulla (Assam : Muslim) : Mr. President, Sir, I beg to move:

"That in sub-clause (2) of Clause 19, for the word 'lakh' the words '2 lakhs' be Substituted; and

"That in sub-clause (2) of Clause 19, after the words 'any province', the words 'and a maximum of 300' be inserted."

My first amendment is only a means to an end and the end is to fix a maximum. A minimum has been suggested in the report. For smaller provinces, the recommendation in the report may work very well, that is, under the new constitution, representation should be one member for every lakh. But if we apply this principle to the bigger provinces, in my opinion, the legislative bodies will be so unwieldy

that work will suffer. Take for example the most populated of the Provinces, the United Provinces which have a population of more than five and half crores according to the census of 1941. If we are to give as recommended in this Draft Constitution one representative for each lakh, the House will have at least 550 members. We know that in every census the population in India increases on an average by 15 per cent. So after 1951 we will have increase this big number by another 15 per cent. or in other words, U. P. will have a Provincial Assembly of more than 600 persons. Well, the same will occur in the Madras Presidency which has now 49,300,000 population and so will have a House of 493. Even Bihar which has got a population of 36,300,000 will have at least 363 members in its Provincial Legislative Assembly. In my opinion, Sir, these are very substantial numbers. It has been the experience of almost everyone that the larger the number in a body the less the interest of parties concerned therein. In order to make these constitution of the provinces not unwieldy, I have proposed that a maximum should be fixed and the maximum should be 300. In the present constitution of 1935 we had adopted similar reduction and therefore there is nothing novel in my suggestion, *e.g.*, Bengal which till lately had a House of 250 members counted over 6 crores of people in the last census, Madras which now counts 49,300,000 people has a House of 216, U.P. 268, and Bihar 152.

There is another aspect to the same question. In the report or rather the Draft Constitution which is going to be placed before this Assembly for the Union Parliament.

“The House of the People, [it says in Clause 14 (1) (c) I 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.”

Now, that the Indian Constitution will be functioning for a population of 30 crores, under this computation the House of the People will have a minimum number of 300 representatives and a maximum of 400. It is needless for me to emphasize that this National Assembly will be the centre of all political and executive authorities of the Federation of India. If we are satisfied with a representation ranging between 300 to 400, I think the Provincial Legislative Assembly which will be limited in its jurisdiction to the territories of the Unit only should not have a higher number of representation in their Assembly. It is for this purpose, Sir, that I recommend that as we have provided for a minimum of representation to 50 similarly we should provide a maximum also and according to my humble opinion, an assembly of 300 will give a wide scope for all provincial activities.

(Messrs. V. I. Muniswami Pillay, Gokulbhai D. Bhatt, R. K. Sidhwa, P. Khaitan, and H. J. Khandekar did not move their amendments.)

Mr. R. K. Sidhwa (C. P. and Berar: General): Sir, in the note to this clause you will kindly find a sentence as follows:

“There is to be no special representation in the Legislative Assembly either for universities, or for labour, or for women.”

So far so good. But no mention has been made regarding trade, commerce and industry. I have moved an amendment:

“That there should be no special representation to Trade, Industries or Commerce.”

I do not know whether this is an omission. If there is to be no special representation to any special interest, then I do not wish to

[Mr. R.K. Sidhwa]

move my amendment. I therefore desire that none of the interests will be given preference.

Mr. President: That is only a note. It is not a part of the clause.

Mr. R. K. Sidhwa: The intention of the Committee is indicated in this note. I entirely agree with what the Committee has stated because now everybody has to come from the front door having franchise extended to all interests and no special preference to any interest. I do not know why trade, commerce and industry have been omitted. I request that the Honourable Mover will please make it clear in his reply that all special representation will go away.

Mr. President: I take it, Mr. Sidhwa, that you have not moved your amendment because there cannot be an amendment to a note. Mr. Desai.

Shri Khandubhai K. Desai (Bombay: General): My amendment* is almost on the same lines as that of Mr. Sidhwa, and as I understand that hereafter we are going to have only territorial constituencies and there will not be any special constituencies, I do not wish to move my amendment.

Mr. President: Mr. Omeo Kumar Das.

Shriyut Omeo Kumar Das (Assam: General): Mr. President, Sir, I beg to move :

“That in sub-clause (2) of Clause 19, for the word ‘lakh’ the words ‘seventy-five thousand’ be substituted.”

Though my Honourable friend Sir Saadulla has moved an amendment to raise the scale of population from one lakh to two lakhs, I am sorry I have, coming from the same province of Assam, to differ from him. It is the universal demand in Assam that the scale of population in relation to the delimitation of the constituencies should be lowered to the figure of seventy-five thousand. As you may know, Sir, there are many backward communities in Assam, and these communities will have no chance of being elected in bigger constituencies. Many of us Congress-men, though we have not met in the Assam Provincial Congress Committee, have come to a decision about it. The President of the Assam Provincial Congress Committee has already, Submitted a memorandum to the Honourable Sardar Patel on this very point for his consideration. I trust the Drafting Committee which will be formed hereafter will also take this point into consideration.

I want to press before this House another point. The Honourable Sardar Patel has just now told us that Assam has no Upper House. In fact, we do have an Upper House which we want to abolish. We are almost unanimous with regard to this demand. We are not going to have any Upper House in future, which we have been having so long. It is but just and proper that the backward communities of our province should be given the chance of being elected to this only House. I mean the Lower House. I want to press before this House in particular that when you fix the maximum number of members for the legislature there can be no difficulty in the case of major provinces like Madras or U.P. of having unwieldy House by lowering the scale. This difficulty can be met by fixing the maximum,—as Sir Saadulla has already suggested limiting the maximum number to 300,—and to

*That at the end of the Note under Clause 19, the following be added:
“or for landholders, or for commerce and industry.”

my knowledge the Honourable Mover will accept this amendment. In view of this I think the House may have no difficulty in accepting my amendment.

With this I commend my motion for the acceptance of the House.

Mr. President: Rev. Nichols-Roy.

The Honourable Rev. J. J. M. Nichols-Roy (Assam: General): Mr. President, Sir, I beg to move my amendment which stands as follows:

“That the following proviso be added to sub-clause (2) of Clause 19:

‘Provided that in giving representation to any territorial area or areas inhabited by hill tribes, the Provincial Government may determine a lower basis of population than one lakh and the total representation of the Province shall be increased accordingly.’”

My reason for giving this amendment is this that the language of sub-clause (2) of Clause 19 seems to prevent any province from having a number of representatives in the Legislative Assembly that will be more than the proportional number of one man for every lakh of the population. If that is the meaning of the language of this clause, then it will be a real hardship on the people of the hills in Assam. In the hill areas of my Province we have large territories which are inhabited by a proportionately small number of people. For example, in the Lushai Hills we have an area of over 8,000 sq. miles, but inhabited by a people called Lushais—(they call themselves Mizos)—numbering only a little over a lakh and a half. In one of the plains district, however, there is an area of about 3,800 sq. miles with a population of 12,54,000. This being so, if the basis of population of one lakh per-member is applied to the hill areas also, it will clearly be a great and terrible hardship to the people of the hills.

Then, Sir, there is another area—the North Cachar hills—with an area of about 2,000 sq. miles which is inhabited by hill tribes, with a population of only about 37,000. This morning just before we came here we got a letter from the people of that area saying thus :

“Going through the papers, I find that the Model Provincial Constitution Committee has recommended that representation to the Provincial Legislatures shall be on the basis of population of not more than one man for one lakh, subject to the minimum of 50. This, if adopted without a proviso for special cases, will permanently deny representation to North Cachar hills which has a population of only 37,000. To deny representation to a whole sub-division on the ground of population would be an injustice and even absurd.”

Sir, this is the feeling among the hill people of Assam, and it applies not only to this particular hill area, but it applies to all the hill areas in Assam.

Even now, Sir, there is representation to the Assembly of Assam from the hill areas with a much lower population basis than one lakh. There is an area represented by one representative, but having a population of only about 85,000; there is another with a population of about 70,000 sending one representative. Now, if this clause means that no representative can be sent from a territory which has a population of less than a lakh then it means that these constituencies will have to be abolished. When we are talking about the coming of freedom for India, these will mean slavery to the hill people which the hill people cannot accept as justice at all. Therefore, Sir, I request that the drafting of this clause should not prevent a lower basis of population in a province which needs such a lower basis of population for one member in the Legislature. I am told by someone that this clause probably allows all this.

[Rev. J.J.M. Nicholos-Roy]

It allows that a province should have representation between 50 and, if a maximum is put, 300 or 400. But it seems to me that the language may be interpreted in a different way altogether. If the interpretation is that a province is free to fix the number of representatives then it will be all right. But if it is fixed only on a basis of one representative for 1 lakh it will be a great hardship and its operation will work to the detriment of the people of the hills area. We must also consider the fact that there are some people in the hill areas of Assam now who want to be independent altogether and stand as a separate State, some who want to join Burma and some others who probably want to join Pakistan too. If this kind of representation be forced upon the hill people of Assam, it will help that propaganda and will cause a great deal of trouble to India. Therefore I would request that the Mover of the resolution may enlighten the House whether the province will be able to give representation on a lower basis to the peoples of the hill areas where in a large territory the population is small. And these territories are sources of potential wealth and are therefore very important to the province of Assam. If that is not considered it will be a great hardship indeed. Sir, I commend my motion for the acceptance of the House.

(Messrs. M. Ananthasayanam Ayyangar, Shibbanlal Saksena and Biswanath Das did not move their amendments.)

Mr. Lakshminarayan Sahu (Orissa: General): Mr. President, Sir I want to add a sub-clause at the end of sub-clause (1) of Clause 19: "Orissa may have an Upper House when Orissa States will join the Province of Orissa". Half of Orissa is practically Orissa States and there is a great prospect now that the Orissa States will be joined to the present political Orissa. As such, in order to bring about some good feeling among the Rajahs of the Orissa States I think an Upper House will be a great need in Orissa. That Upper House will act as a good check upon the democratic outbursts. They generally have the fear that there will be too much of democracy and that they will be swept away. Therefore I think there should be a definite sub-clause like this in Clause 19.

Besides, there is a prospect of revision of boundaries and in that case the boundary of Orissa will be extended in different directions. That is what we hope, and the population will also increase. The new population that will come into our fold will gradually be one with us only when they feel assured that there is an Upper House where all the legislation that will be passed in the Lower House will be revised and the legislative actions properly done. That is another reason why there should be a provision like this.

The Mover of the resolution, Sardar Vallabhbhai Patel, has said that it is left to the province which may choose to have an Upper House if it so likes. It is very good. But at the same time I want to point out to the whole House here that there is really great need for an Upper House. I therefore move:

"That the following be added at the end of sub-clause (1) of Clause 19:

'Orissa may have an Upper House when Orissa States will join the province of Orissa'."

I move my next amendment also, *viz.*

"That after item (b) in sub-clause (4) of Clause 19, the following new item be added:

'(c) There should be the power of recall for voters of every constituency in case in any situation they want to recall their elected member or members'."

This is essentially necessary because we feel that at times situations arise when voters want to remove a member from the Legislative Assembly but cannot do so because there is no such provision in the Act. When we are going to have a new Act, I think we should provide for this new clause, namely, recall.

As regards the difficulty of how to operate it, I think there will not be much difficulty because the constituency will be very small. Then we may provide that if two-thirds, or some such proportion, of the voters vote against a member whom they do not like, in that case the member goes out. As regards the full procedure I am not conversant with it and it may be found out.

Moreover I think a provision like recall is necessary when we are going in full force towards democracy, and without a provision for recall our legislation will not be complete because it is being gradually provided in other places, as for instance in Switzerland and in some American States. As early as in 1922 in the Bihar and Orissa Legislative Council, when Mr. Madhusudan Das of Orissa was the Minister for Local Self Government, he introduced this provision of recall in the local Legislative Act there. If there be a fear that the provision may be misused and it will be difficult for the people to work it, I do not think there is much in that fear, because though there is provision for this recall in the Bihar and Orissa Local Self-Government Act it has not been used although people have begun to talk about it. It is not very easy to take advantage of this. Therefore there should be no such fear that if there is a provision of recall people will rush into it and there will be various parties trying to oust one member and put in another. Even if that be so I would welcome it because that will be a sort of education for our people. Our people generally after giving their vote once do not think about it afterwards, but if there be such a thing they will begin to think and the people will be more active and agile. I therefore move that these two sub-clauses should be inserted in this clause.

Then I will touch on another point as regards population. My friends Mr. Omeo Kumar Das and Mr. Nichols Roy have said that the constituencies should be small. I also feel like that, because in Orissa there are many aboriginal people and they are all different groups. The people can send in one of their own people if the constituency is small. For instance the *Amanatvas* are only 60,000 people; now they cannot send their own representative because their number is small. Then there are other hill tribes who generally number twenty or thirty thousand. Of course we cannot extend this legislative power to all of the groups but we should still have the desire that those people on the hills who have been neglected so long should be given powers in such a way that they may be politically educated as quickly as possible, so that we may be able to bring them up to our level. Sir, I move.

Mr. R. K. Sidhwa: Sir, I beg to move that in sub-clause (2) of Clause 19 for the figure "50" the figure "60" be substituted. In the new constitution we are going to have a wider franchise which means a larger number of representatives in the Legislature. It is very desirable that following the democratic spirit we should have in the coming constitution a larger number of members in the Legislature. I do not share the views of Mr. Saadulla that a bigger Assembly is cumbersome and unwieldy. These stock arguments are often advanced when people do not want a bigger Assembly. Here is the Constituent Assembly consisting of about 225 members. Is it cumbersome and unwieldy? The debates are attentively listened to and we are conducting the business smoothly and rapidly. Even in the Central Legislative Assembly or in the Provincial Assemblies with only about a hundred members I have

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sometimes seen a want of a quorum and the Speaker or President had to go on ringing the bell. But here we have such a large number of members but still they are attentive to their duties and we get the benefit of their knowledge and experience out of which will be framed a very useful constitution. So I support the Mover's proposition that in the Assembly there should be one member for every lakh of the population.

Then, Sir, coming to the minimum, I have suggested 60 for 50, and the reason is this. The smallest province in the Indian Union today is Orissa with a population of 84 lakhs and they have a House of 60 with an electorate which is narrower than what it will be hereafter. With a larger electorate to come we cannot cut that down to 50. The two new provinces of East Punjab and West Bengal will each have a population of 2 crores and 50 lakhs. They are big provinces and we should see that they get full representation. Therefore I suggest that for provinces like Assam or Orissa, etc., the minimum should be 60 as at present.

Mr. President: I think Mr. Sidhwa has misunderstood the clause. That is only the minimum. If the population is 84 lakhs the number will be 84 according to this clause. The amendment does not touch those cases; it touches only those where the number is less than 50.

Mr. R. K. Sidhwa: But if there is to be a minimum I want it to be 60. That is my amendment and I hope the House will accept it. The more members there are I think the better it is because it would be well to have the benefit of their intelligence, knowledge and experience. Sir, I move.

Mr. President: The Resolution and the amendment are now open to discussion.

The Honourable Mr. Gopinath Bardoloi (Assam: General): Mr. President, I did not want to participate in this debate. But since my friend Mr. Nichols-Roy has placed certain issues before the House, I consider it necessary to make certain observations.

Sir, I have the privilege of being the Chairman of the Eastern Tribal and Excluded and Partially Excluded Areas Sub-Committee. In that connection we had not merely an opportunity of touring the hill areas but also of studying the conditions of the people in the hills. From a broad point of view it can definitely be stated that the method of representation proposed to be introduced for the general population cannot be made to apply to the people in the hills.

It will be seen that Assam today, with Sylhet gone, has a population of 71 lakhs and the extent of the province as it stands is only 62,000 square miles. Most of the people live in an area of about 30,000 sq. miles in the plains. With the hills, Assam comprises now 62,000 sq. miles. If you deduct 30,000 sq. miles, you will find that thirteen lakhs of hills people live in 32,000 sq. miles. What is more important for us to know is that they live as separate tribes and not as we do in the plains in a common pattern. Therefore, if any representation is proposed to be given to these people, it must be different from the manner in which representation is proposed to be given to the people in the plains. In view of this state of affairs, I think that the proposition that has been put before the House by Rev. Nichols-Roy should be supported by us generally. But I do not know whether it is necessary at all to accept the amendment as it stands. It is possible known to all of you that the

Advisory Sub-Committee will be making some recommendations in respect of representation also. Now what can be done here is that we can agree to accept the general principle so far as all other areas than the plains are concerned. I am not discussing here what that representation ought to be and whether it should be one representation for a unit of 75,000 or 1,00,000 or even 2,00,000 of the population, although in my opinion this should vary according to the population and area of the different provinces. But the broad fact should be accepted that these areas should be represented under some special plan. Mr. Nichols-Roy's recommendation is that this matter should be left to the provincial governments concerned to determine. I think the better course would be to leave this matter in the hands of the Advisory Sub-Committee and await their recommendations. The House can then consider the matter. The House should also bear in mind that in the present constitution, these hill people enjoy considerable weightage in representation. With these observations that the spirit of Rev. Nichols-Roy's amendment should be accepted, I resume my seat.

Mr. H. V. Kamath (C. P. and Berar: General): Mr. President, Sir, the second half of the first sub-clause of this clause reads thus: "in the following provinces, there shall, in addition, be a Legislative Council" and then in brackets it lays down "(here enumerate those Provinces, if any, which desire to have an Upper House)". I am glad that the words "if any" have found a place here. I hope to God that no province will elect to have an Upper House. But the possibility cannot be entirely ruled out of certain provinces choosing to have an Upper House. Therefore I stand before this House today to put in a plea for the abolition of the existing second chambers and against the creation of new ones.

Sir, in modern political practice, the second chamber is fast becoming an anachronism. In a federal democracy the structure which we have envisaged for our Hind, our Bharatavarsha—we may visualise a second chamber for the Centre, but it would be pernicious and vicious to have a second chamber in the constituent units of our federal democracy.

Various motives have actuated the creation of second chambers all over the world. In the last century, it was stated more or less as a political axiom that no democracy should be without a second chamber. But in the 20th century this practice is fast fading out and giving way to unicameral legislatures. Various motives have, as I said, led to the creation of second chambers. Firstly, there has been the desire to maintain the old tradition. I am glad that in India at least we do not have any such tradition. In the first decade of this century the British Government created second chambers mostly as a hang-over from the last century. But in the middle of this century this system stands discredited.

The second motive which has actuated the creation of second chambers is the desire to safeguard the interests of the propertied classes and vested interests. If we have second chambers in every province of our Federation, then I am afraid, these very classes which propped up British rule in our country, which buttressed and bolstered up British rule in the days of its decline, will find a place in those bodies. I for one would not support such a development in our country.

The third motive which has actuated the creation of second chambers is that they would act as a sort of check on the impulsive and hasty tendencies of the Lower House. Well, Sir, in modern democracies the practice is for legislation to pass through a very elaborate process, and as such there is no need for any multiplicity of legislative checks, specially considering the times through which we are passing. When we are aspiring to build a strong Union, we cannot afford this luxury of a second chamber which I am afraid will hamstring the Government in the

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provinces and render the Government static or at any rate less dynamic. We want these Governments should be dynamic and I am certain that second chambers would act as a drag on them in every province. These are the considerations which impel me to oppose the creation of second chambers. I hope that the constituent units of the Federation will not elect to have second chambers in our Hind, our Bharatavarsha.

Mrs. Renuka Ray (West Bengal: General): Mr. President, Sir, I rise to support Clause 19 and in particular section (2) of this clause which provides for territorial representation without reservation of seats. We are particularly opposed to the reservation of seats for women. Ever since the start of the 'Womens' Movement in this country, women have been fundamentally opposed to special privileges and reservations (*hear, hear*). Through the centuries of our decadence, subjection and degradation, the position of women too has gone down until she has gradually lost all her rights both in law and in society. Nonetheless, with the first stirring of consciousness amongst women, there never arose any narrow suffragist movement that has been so common in so many so-called enlightened nations. Women in his country have striven for their rights, for equality of status, for justice and fair play and most of all to be able to take their part in responsible work in the service of their country. The social backwardness of women has been sought to be exploited in the same manner as backwardness of so many sections in this country by those who wanted to deny the country its freedom.

Before the 1935 Act came in, the representatives of India's women made it very clear that they were against the reservation of seats or any special privileges for women. They made this clear through the All India Women's Conference. Our representatives, the three women who gave evidence before the Joint Parliamentary Committee, made it clear in unequivocal terms—(I may say that Rajkumari Amrit Kaur was one of the three women)—that we did not want reservation, but in spite of our protests, and in direct contravention to our desire, reservation of seats was brought into the 1935 Act. This act has been so great a factor in bringing dissensions in our fold and has at last divided the country. But where the heart is strong, where there is sound judgment, no machinations can divide and the women did not allow themselves to be caught in the trap. It would be wrong to say that all the credit for our attitude goes to women. From the very start of our national awakening in this country, enlightened men have encouraged women to come forward as equal partners in the struggle for freedom and to do service for national regeneration in the different walks of life. When Mahatma Gandhi gave his call so specifically to the women of this country to take part in the national movement, all the social barriers of centuries broke down. There are no words to convey the gratitude of the women of this country to this Great man—who has today brought the country to the very threshold of freedom (*hear, hear*). Sir, it is not only the inherent qualities of women but more particularly I should say the qualities of our men that is responsible for the fact that in our country, there has never been any strife between men and women.

When the Hindu Law Reform Bills were put in the Central Assembly, women were naturally anxious that these bills which conceded certain rights to them should be adopted, but we found an opposition which was not so great in numerical strength but which was very formidable because of the fact that it was from a reactionary group who were the erstwhile supporters of the then Government and who were also betraying the country at every turn. The alien Government could not afford to displease them, and unless we too were willing to barter away our souls and our birthright, we could not fight that opposition.

Sir, what we have upheld so long has come to pass today. We always held that when the men who have fought and struggled for their country's freedom came to power, the rights and liberties of women too would be guaranteed. We already see the evidence of this today. No reservation of seats was required to induce the men who are today in power to select a woman as Ambassador, the second in the history of any nation. Vijayalakshmi Pandit has not been selected because she is a woman nor was sex made a bar to the appointment. It is her proven worth that has been responsible for her appointment to the high office of ambassador to a land which is admittedly one of the greatest forces in the world today. This has vindicated our position and women are indeed proud of this. I am confident that it will not be only women of exceptional ability who in future will be called upon to occupy positions of responsibility, but all women who are equally capable, equally able as men will be considered irrespective of sex.

In the Legislatures of India, we have some women, but there are few women who have come from general constituencies. I think that the psychological factor comes into play when there is reservation of seats for women. When there is reservation of seats for women, the question of their consideration for general seats, however competent they may be, does not usually arise. We feel that women will get more chances in the future to come forward and work in the free India, if the consideration is of ability alone.

With these words, Sir, I should like to support this clause which has done away once and for all with reservation of seats for women, which we consider to be an impediment to our growth and an insult to our very intelligence and capacity.

Mr. Sarangdhar Das (Eastern States): Mr. President. Sir, I stand here to oppose the amendment of Mr. Lakshminarayan Sahu for creating an upper chamber in the Orissa Legislature in anticipation of the Rajas that is, the Rulers of Orissa, coming into the province at some future time. An upper chamber anywhere is an anachronism in these days of democracy. With adult franchise, when all the legislation necessary, and all the safeguarding of interests necessary, are done in one chamber the members of which are elected by the whole people, there is no necessity for an upper chamber and as such I would request the Mover of this clause to see that there is no loophole left for the creation of an upper chamber in future, and particularly in Orissa. I represent here a group of small States in Orissa. At the same time, I am a member of the Orissa Legislative Assembly, and I know the feeling of the people of Orissa Province.

There is never any talk anywhere of an upper chamber and it will be disastrous to create one simply to perpetuate the vested interests of the Rajahs. So long, there had been this vested interests created by the British Government in India. But now, by creating an upper chamber in the province we shall be perpetuating that vested interest in another shape. I therefore strongly oppose this amendment and I hope the House will not in any way support this kind of reactionary measure.

Saiyid Muhammad Saddulla: Mr. Speaker, Sir I hope this Honourable House would give me the indulgence to make a special plea for the smaller units of the Indian Federation and especially Assam. Assam was the Cinderella of all India Provinces till the Simon Reforms came into operation. Then she stepped up a bit and came over in the list of provinces from the bottom to three of four steps upwards. for smaller

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states than Assam came into existence like Orissa, Sind and North-West Frontier Provinces. But with the present set up and with the result of the referendum in the district of Sylhet of the Province of Assam she has again been relegated to the Cinderella Province of the Indian Federation. Conditions in Assam are not known to most of the Honourable Members of this House. Assam is a land of wide distances and very sparse population. In extent it was very nearly equal to the province of Bengal as it existed three months ago, but in population it has only one-sixth the population of Bengal. As has been stated earlier by two of my compatriots, we have very primitive and aboriginal people within our areas which were excluded from the Ministerial influence under the scheme of the Simon Reforms. But the then authorities took into consideration the undeveloped state of Assam and of our peoples, and gave us not merely the Provincial Legislative Assembly with a membership of 108 but also, in spite of the opposition of the peoples, an Upper Chamber was imposed on them. I am not concerned here with the Upper Chamber for Honourable Members will be glad to know that all the Members from Assam present in the Constituent Assembly have sent a joint letter to the Honourable the President expressing the views of Assam, not merely of the Congress and the Muslim League but the entire population of Assam, that we do not want any Second Chamber in the future constitution. When I say that Assam has 108 members when its population was only 92 lakhs in the 1931 census, I am not disclosing the fact that one third of Assam was unrepresented in this Legislative Assembly. For Assam has three frontier areas, the biggest one is called the Sadiya Frontier, the next one is the Balipara Frontier and the third is the Tirap Frontier. All these were excluded from the Reforms of 1935. One may say that these being Frontier areas they were right to exclude it. But insular districts like the Naga Hills, the North Cachar Hills and the Lushai Hills also were excluded from participating in the Reforms of 1935. My plea before this August Assembly is that you will have to give your careful consideration if you want backward provinces, undeveloped provinces like Assam—I would not mention any others, because they may not think themselves backward—should be treated separately in the future constitution. I therefore have great pleasure in supporting the motion that has been placed before the House by my Honourable friends Sjt. Omeo Kumar Das and Rev. J. J. Nichols-Roy. Rev. Nichols-Roy has placed before the House the fact that a very large area called the North Cachar Hills with an area of 2,000 square miles but with a population of 37,000 wants to get representation in the future constitution of Assam. But he does not say what should be the limit of population which should entitle the area for representation in the Provincial Constitution. My Honourable friend Sjt. Omeo Kumar Das wants that the population basis should be reduced from one lakh to seventy-five thousand. Some speakers who spoke after I moved my own motion have misunderstood me. I do not want that the representation should be reduced. As a matter of fact I now openly make the plea that the smaller provinces should get a weightage as regards the number of people on the Provincial Legislature. What I wanted was just to place before the House my own humble opinion that there should be a maximum number fixed for such representation and I placed it at 300. One Honourable Member, I refer to my friend Mr. Sidhwa from Sind, fell foul of me and said that even in this House which consists of 228 members, we do not feel that this is unwieldy and that every one listens to the speeches with rapt attention. This is as it should be. For, this Constituent Assembly represents the *intelligentia*, the patriots, those who have sacrificed their all in the service of the country. No wonder, Sir, that we all listen so attentively and with rapt attention when we have men like Mr. Sidhwa who have to be given a place in this Constituent Assembly although under his physical domicile he was not entitled to sit in this House.

Mr. President: My Kakkan wants to speak in Tamil. I do not know if many members will be able to understand Tamil.

Shri P. Kakkan (Madras: General): Mr. President, I want to speak in Tamil which is my mother tongue. If I speak in Tamil, I can express my ideas clearly. So, I want to speak in Tamil which is my mother tongue.

(The Honourable Member then spoke in Tamil)

Shri Raj Krushna Bose (Orissa: General): Sir, I would not have taken the time of the House and spoken on this motion had not one of my colleagues in the Provincial Legislature moved an amendment to the effect that Orissa may have an Upper House if the Orissa States will join the Province of Orissa.

In opposing the amendment, I should like to point out to the Mover that probably before giving notice of the amendment, he has not closely studied Clause 19 of the Provincial Constitution. Clause 19(4) says: "In any province where the Legislature has an Upper House, the composition of the House shall be as follows": Then the procedure with regard to the composition has been enumerated. Then, the note says: "It was agreed that the members of the Constituent Assembly from each Province should vote separately and decide whether an Upper House should be instituted for the Province." I should like to point out to my Honourable friend that if at all he desired to move the amendment, it would have been proper on his part to consult his colleagues here, who are members of the Orissa Legislature as to the effect the amendment would have on the province itself. I would not have opposed it if the effect would not be to commit the province to have an Upper House.

Evidently, Mr. Sahu's object on moving the amendment is to facilitate the Orissa States to join the Province of Orissa. If that is his object, let me tell him that they can do so even without an amendment like this, as this has been provided for in Clause 3 of the Draft Constitution of the Union whereby the States who want to merge themselves in the provinces can do so, and for this an Act of Parliament will be necessary. Clause 3 of the Draft Union Constitution says:

"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 thereof.

- (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.

"Sir, I do not know whether what Mr. Sahu contemplates is going to happen, or when or how it is going to happen, because I know attempts have been made by leading men of Orissa, not for a few months, but for the last few years, for the amalgamation of the States of Orissa numbering as many as 26, with the Orissa Province but till now they could not be persuaded to do so. Supposing these attempts bear fruit and some or all the States agree to merge in the Province of Orissa. Clause 3 of the Draft Union Constitution contains a provision for such an union by an Act of Parliament of the Federation. In that case, the Legislature of every Indian State which is affected thereby will have to give their consent to such a union. I do not see any reason, Sir, when there is such a provision, in the Union Constitution, why Mr. Sahu chose to move this

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amendment. The amendment will, in effect, commit the province to create an Upper House where there is no need for it. The amendment is therefore redundant. Another amendment which provides for the recall of members by the voters in case such a situation arises has been moved by Mr. Sahu. He said that in Switzerland such a provision exists. I am sure no such provision exists in Switzerland. If there are any, there are such provisions in some of the American States but in the present state of our country where democracy is but in its infancy, it would be improper to provide for such a thing and render the constituencies a battle ground between candidates unnecessarily and make them victims of rival political parties. I would therefore oppose both the amendments and would request him to withdraw both his amendments.

The Honourable Mr. Jaipal Singh (Bihar: General): Mr. President, I have great pleasure in supporting Clause 19 as it is. At the same time I feel somewhat inclined favourably to the picture that has been depicted by members from Assam where the problem of the hilliness, inaccessibility, sparseness of population and all similar physical difficulties have been pointed out. I am quite definite the amendment that has been moved to the effect that, instead of one lakh, two lakhs of people should send a representative should not be accepted by this Assembly. If anything, we should go in the other direction and make representation as broad-based as possible and reduce the figure one lakh to something less. I do not say it should be 35,000, or 10,000 or 50,000. I think we have to look to the practicability in the present set up. If we are going to be democratic at all, we should be as representative, make representation as broad-based as possible and we shall not be doing that by increasing the figure higher than one lakh. We have been given a good picture of the difficult and mountainous character of the Province of Assam. That is true, that is a feature which is characteristic of most of the Adibasi tracts throughout India. I come from the Chhota Nagpur Plateau, Jharkhand, which is equally mountainous, equally inaccessible as some of the territories that have been described by my friend Mr. Gopinath Bardoloi from Assam. Unless the delimitation of the constituencies is done on a much smaller population basis, it will simply mean that elections will have no strong appeal to the people. It would be difficult for the people whose votes we want and whose opinions we seek, to be interested. Sir Muhammad Saadullah, in his amendment, pointed out that he did not want that any House should be too unwieldy. He gave us a figure which he wanted not to be exceeded. That is all very well but Mr. President, I have been reading, I have been hearing a great deal from the agents of the Indian National Congress, expressions about a re-distribution, a re-alignment of provinces on a cultural and linguistic basis. There is the famous Karachi Minority Resolution, 16 years old and, recently, we have had vociferous demands from various areas such as Andhra, Kerala, Karnataka, Maharashtra, Mahakoshal, Mithila and Jharkhand. I do not know whether I have left out any but there are these areas which have been demanding that there should be a re-alignment of the present unwieldy and unnatural provinces. Well, I do hope that there will be a re-alignment, that, the Indian National Congress will honour its word, honour the Karachi Minority Resolution and set about it quickly to get this dream realized. In that case, I think, arithmetically, Sir Muhammad Saadulla's fears will disappear altogether. Then on the basis of one per lakh the representation will never exceed the figure he has mentioned.

Sir, I fell in rather an awkward position in regard to the point that *Padre* Nichols-Roy has raised. Being a tribal myself, realizing that Adibasis must get effective representation in the future democracy of

this country, I find myself confronted with a problem of there being something like 177 listed tribes in the decennial census of 1941. Now if we were to accept that, every pocket of the tribe should be represented—this is roughly the picture *Padre* Nichols-Roy has given up; he has mentioned a figure, that figure is meant to include particular pockets of the Assam tribes now if we are to work on that basis, I *am afraid even a figure as low as a thousand, if one thousand people were to send representatives, it would mean that somebody will be left out.* I think we have to draw the line somewhere and for the present I do feel that the figure that the Honourable Mover has stated in his clause as it stands *i.e.*, one per lakh of population, is good enough and I have great pleasure in supporting it.

Mr. Khandubhai K. Desai: Sir, I move that the question may now be put.

Mr. President: Closure has been moved. Now I ask the Mover of the Resolution to reply to the debate.

The Honourable Sardar Vallabhbhai Patel: Sir, several amendments have been moved and in the course of the discussion, some amendments have been opposed by some speakers. The sum total of the discussion results in an impression on me that there are two amendments which may be accepted. One is from Mr. Sidhwa which provides for the minimum number in Clause 2 to be raised from 50 to 60. Another amendment is from Sir Saadulla which provides for the maximum number to be fixed at 300. Except for these two amendments which I propose to accept, the rest, I would like to oppose.

There is an amendment moved by a friend from Orissa suggesting that there should be an Upper House in that province. I do not think that any amendment is necessary for that, because, in the Resolution itself it has been provided that it is the option of the province to have an Upper House or not. He will, of course have his say in that Provincial Assembly. He wants an amendment here, probably because he is afraid of not succeeding in that Provincial Assembly. But we do not propose to impose an Upper House on a province against its own will. Of course, there is no Upper House in the Province of Orissa to-day, and I see that this proposal to have one has been opposed by another friend from Orissa in this very House. Probably there is no chance of his succeeding in that attempt. I do not see why we should accept it.

He has moved another amendment in which he suggests that power should be given in the Constitution to the voters to recall a member who has lost the confidence of his constituency. I do not see why such a provision should be made. I think it should be left to the honour of the member elected. When he feels that he has lost the confidence of his constituency, he must resign of his own accord, instead of having to be called upon to do so, and having a provision to that effect made in the Constitution. A wise member will always keep his finger on the pulse of his constituency and I think instead of putting in such a provision, we should try to develop, a healthy sense of responsibility and sense of honour in the members. If there are any stray instances or some black-sheep who having lost the confidence of their constituency still want to continue to represent that constituency in the House, for some such bad instances we should not disfigure our Constitution. We should leave it as it is, to the good sense of the members concerned.

[Sardar Vallabhbhai Patel]

Then, it has been suggested by some friend from Assam who seems to have developed a sense of inferiority complex, that Assam must always have some special treatment. It is a matter for congratulation that women have come forward to say that they do not want any special treatment. But at the same time, it is a matter of regret that men have not yet come up to that standard. Let us hope that nothing will be provided in this Constitution which would make exception in favour of men where women object.

It has been said that for tribal areas or for some such areas some concession should be made in the matter of representation. In the first instance I would suggest that this is a matter which would primarily be considered by the special committee appointed for that purpose. We have not yet got the report of the Tribal and Excluded Areas Sub Committee and we would not like to hamper their work or their discretion. We will not encroach upon their rights to make a free and unfettered report. I therefore, suggest that we should not take this point into consideration now, but that the general principle as enunciated in this clause be accepted. If it is seen that after the report of this Sub-Committee is received, this clause requires some modification, that will be incorporated in the clause.

I do not think there is much that I should say now. We have had a full discussion for more than two hours and many arguments that were advanced have been replied to by contrary arguments. Therefore I now move the clause for the acceptance of the House, with the two amendments I have referred to.

Saiyid Muhammad Saadulla: Sir, I beg leave to withdraw my first amendment.*

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

Shriyut Omeo Kumar Das: Sir, I beg leave to withdraw my amendment also.

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

Mr. President: Now we come to the second amendment moved by Sir Saadulla:

“That in sub-clause (2) of Clause 19, after the words ‘any Province’, the words ‘and a maximum of 300’ be inserted.”

This, I understand, has been accepted by the Mover, but must be accepted by the House also.

The amendment was adopted.

Mr. President: Then there is the amendment moved by Mr. Sidhwa:

“That in sub-clause (2) of Clause 19 the figure ‘60’ be substituted for the figure ‘50’ ”.

This amendment also, I understand, has been accepted by the Mover, but it has to be accepted by the House also.

The amendment was adopted.

*That in sub-clause (2) of Clause 19 for the word “lakh” the words “2 lakhs” be substituted.

Mr. President: Then there is the amendment moved by Rev. Nichols-Roy:

“That the following proviso be added to sub-clause (2) of Clause 19:

‘Provided that in giving representation to any territorial area or areas inhabited by hill tribes the Provincial Government may determine a lower basis of population than one lakh, and the total representation of the Province shall be increased accordingly.’”

Shri K. Santhanam (Madras: General): On a point of order, Sir, this is a matter which should be referred to the Advisory Committee.

Mr. President: I think it is too late now. The amendment has been moved here and discussed. I take it that if the Advisory Committee has to make any suggestions on this point, it will be taken into consideration by the House.

The Honourable Rev. J. J. M. Nichols-Roy: Sir, as the Honourable Mover Sardar Patel, says that this question will be considered by the Advisory Sub-Committee now dealing with the Excluded and Partially Excluded Areas, and that the recommendations of that Sub-Committee will be discussed by this House, and that this clause will be subject to the recommendations of that Sub-Committee, I do not see any necessity to press my amendment. I want to withdraw it.

Mr. President: I think this matter will be considered by the Advisory Committee and its recommendations will come up before this House. I take it that the House permits Mr. Nichols-Roy to withdraw his amendment.

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

Mr. President: There are two amendments by Mr. Lakshminarayan Sahu. Does the Honourable Member desire to press them?

Mr. Lakshminarayan Sahu: Sir, I desire to withdraw both of them.

The amendments were, by leave of the Assembly, withdrawn.

Mr. President: I shall now put the clause as amended to vote. I suppose it is not necessary for me to read out the clause as amended.

Maulana Hasrat Mohani (United Provinces: Muslim): Sir, I oppose the whole clause and in this connection I want to give expression to some of my views. Will you permit me to do that?

Mr. President: We have already had a long discussion on the clause and the amendments thereon.

Maulana Hasrat Mohani: Certain misunderstandings have been created about my political views by Sardar Patel and Pandit Nehru. I had no occasion to remove those misunderstandings. If you would allow me only a few minutes I shall express those views.

Mr. President: I am afraid it is too late to have any further discussion. If the Maulana had been listening to the speeches and not talking to other members he would have had his opportunity.

Maulana Hasrat Mohani: Sir, I oppose the whole resolution and this report altogether and; I want it to go on record that I oppose the whole thing at this stage when you put the amended proposition to the vote of the House.

Mr. President: I will now put the clause, as amended, to vote. The question is:

“That Clause 19, as amended, be passed.”

The motion was adopted.

The Honourable Sardar Vallabhbhai Patel: Sir, I move Clause 20.

“The provisions for the meeting, prorogation and dissolution of the Provincial Legislature, the relations between the two Houses (where there are two Houses), the mode of voting, the privileges of members, disqualification for membership parliamentary procedure, including procedure in financial matters, etc., shall be on the lines of the corresponding provisions in the Act of 1935.”

I understand that Sir Alladi Krishnaswami Ayyar is going to move an amendment to the last line, *viz.*, “on the lines of the corresponding provisions in the Act of 1935.” Instead of this he suggests a better form which is wider and is on the lines of the procedure in the British Parliament I will accept the amendment when he moves it. Otherwise this clause is a simple one and I move it for the acceptance of the House.

(Prof. Shibbanlal Saksena did not move his amendment.)

Sir Alladi Krishnaswami Ayyar: Sir, I have an amendment to the clause as proposed. It contains two parts. With regard to the first part of it there was some difference of opinion in certain quarters as to whether it should be pressed at this stage and whether it could not be taken up at a later stage. On that ground for the present I am not insisting upon it, though I think there is a good deal to be said in regard to that of it. The first part of it is:

“That at the end Clause 20 the following be added (with the following changes in the provisions of Section 71 of the Government of India Act, 1935):

“After the words ‘in respect of the publication by or under the authority of a Chamber of such a Legislature’ in sub-section (1) of Section 71, add ‘or any accurate reports of such proceedings’.”

I believe there is a necessity for some such provision but as it is felt in certain quarters that that part of it requires further examination I am not pressing it now. I propose to reiterate it at a later stage of the proceedings.

The second part of my amendment is:

For sub-sections (3) and (4) of Section 71 of the Government of India Act, 1935, substitute the following:

“The powers, privileges and immunities of the members of the Legislature of the Province shall be such as are declared by the Provincial Legislature and until so declared shall be those of the members of Commons of the House of Parliament of the United Kingdom and of its members and committees at the establishment of this Constitution’.”

If you will refer, Sir, to section 71 you will notice that the privileges are very restricted. The Legislature has no power to punish its own members and there are various other restrictions too. It was felt, as indicated herein that our Legislature should possess as plenary powers as those possessed by the House of Commons without prejudice to the Legislatures themselves later on making their own provisions. That is the object of this amendment. If there is any feeling that in an Independent India's Constitution there need not be any reference to the House of Commons, later on we might collect all the materials with reference to the privileges of the House of Commons and they might be

substituted. For the present I would press this, because the House of Commons is the Assembly, which has the widest privileges of all the Assemblies of the world.....

Mr. Naziruddin Ahmad: Sir, on a point of order, an Honourable member is smoking in this House while the deliberations are going on. Is it in order to do so? If this is permitted, there will be many more Honourable Members who might claim the indulgence of smoking inside the Chamber.

Mr. President: It would not be in keeping with the dignity of this House or in keeping with our own past traditions that any Honourable Member should smoke in this House.

Sir Alladi Krishnaswami Ayyar: Sir, I also move:

“That the following new clause be inserted after Clause 20 (*That is a very material provision*) :

- ‘20-A. (1) the validity of any proceedings in a Provincial Legislature shall not be called in question on the ground of any alleged irregularity of procedure.
 (2) No officer or other member of a Provincial Legislature in whom powers are vested by or under this Act for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.’”

That is a very salutary and necessary provision, because it ought not to be open to any individual to challenge the validity of any enactment on the ground that any particular rule or order has not been observed in the passage of a particular enactment. That is a provision which has found a place in every Government of India Act. It is a very salutary provision. I would therefore request the House to accept this amendment the reason for which I have explained.

Mr. President: There is no other amendment. So the original proposition and the amendments are open for discussion. Anybody who wishes to speak either on the resolution or the amendments is free to do so.

(No member rose to speak.)

I find that no one is anxious to speak. I shall therefore ask the Honourable the Mover to reply.

The Honourable Sardar Vallabhbhai Patel: Sir, I accept the amendments.

Mr. President: I have to put the amendments, which have been accepted by the Mover, to vote first. I shall put the first amendment of Sir Alladi Krishnaswami Ayyar as it has been actually moved.

The question is:

“That at the end of Clause 20, the following be added (with the following changes in the provisions of Section 71 of the Government of India Act, 1935):

‘For sub-sections (3) and (4) of Section 71 of the Government of India Act, 1935, substitute the following:

“The powers, privileges and immunities of the members of the Legislature of the Province shall be such as are declared by the Provincial Legislature and until so declared shall be those of the members of Commons of the House of Parliament of the United Kingdom and of its members and committees at the establishment of this Constitution”.’”

The motion was adopted.

Mr. President: I shall put Sir Alladi Krishnaswami Ayyar's next amendment.

The question is:

"That the following new clause be inserted after Clause 20:

'20-A. (1) the validity of any proceeding in a Provincial Legislature shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or other member of a Provincial Legislature in whom powers are vested by or under this Act for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers'."

The motion was adopted.

Mr. President: The question is:

"That the clause, as amended by these two amendments, be passed."

Clause 20, as amended, was adopted.

Mr. President: We now come to Clause 21.

CLAUSE 21

The Honourable Sardar Vallabhbhai Patel: I ask permission that Clause 21 may stand over for the present because there is a similar provision in Clause 16 of the Union Constitution and both may be considered together. There being two similar provisions in two constitutions, and this being a controversial matter, there is likely to be some confusion and I therefore suggest that this may be kept over and both considered together.

Mr. President: Clause 21 stands over for consideration at a later time. We come to Clause 22.

CLAUSE 22

The Honourable Sardar Vallabhbhai Patel: Sir, I move:

"The Provincial Legislature may from time to time make provisions with respect to all or any of the following matters, that is to say,—

- (a) the delimitation of territorial constituencies;
- (b) the qualifications for the franchise and the preparation of electoral rolls;
- (c) the qualifications for being elected as a member of either House;
- (d) the filling of casual vacancies in either House;
- (e) the conduct of elections under this Constitution and the method of voting thereat;
- (f) the expenses of candidates at such elections;
- (g) corrupt practices and other offences at or in connection with such elections;
- (h) the decision of doubts and disputes arising out of or in connection with such elections;
- (i) matters ancillary to any such matter as aforesaid:

Provided:

- (1) that no member of the Lower House shall be less than 25 years of age and no member of the Upper House shall be less than 35 years of age;
- (2) that the superintendence, direction, and control of elections, including the appointment of election tribunals shall be vested in the Governor acting in his discretion."

Probably there will be a motion for deletion of Proviso (2) which I will accept because other provision has been made for it. Sir, I move this proposition for the acceptance of the House.

Sri K. Santhanam: Sir, I move:

“That in Clause 22 after the words ‘from time to time’ the following be inserted ‘in accordance with the procedure for amending the Provincial Constitution’.”

As the clause now stand, by a mere ordinary law such important matters as the delimitation of territorial constituencies and the qualifications for the franchise and the preparation of electoral rolls can be altered. It will mean that by a snatch vote a simple majority can upset the entire basis of the Provincial Constitution; it can gerrymander constituencies and make changes so that it can dissolve the House and come back to power, in a larger majority. Therefore some restrictions are needed. I suggest these changes should be made, only in accordance with the procedure for amending the Provincial Constitution. That procedure for amending the Provincial Constitution has not been laid down in the present Report, but I have tabled a clause for that purpose. The procedure may contain various provisions. Certain parts of the Provincial Constitution may be changed by one procedure and certain other parts may require a more elaborate procedure. Whatever that may be, these matters should be changed only by the procedure specially prescribed in that behalf. They should not be changed by ordinary legislation. I hope therefore that this amendment will be accepted by the House.

(Dr. P. S. Deshmukh did not move his amendment).

Sri K. Santhanam: Sir, I move:

“That in item (b) of Clause 22, for the words ‘the qualifications for franchise’ the following be substituted:

‘Limitations to adult franchise on grounds of non-residence of personal disabilities not based on birth, race, religion, or community’.”

Sir, adult franchise is the basis of the whole scheme. My amendment simply makes it clear that the qualification for the franchise does not mean any power to bestow this on any one. Even for adults there may be some qualification necessary especially on grounds of residence and there may be personal disabilities like insanity or life in prison and all that. I want to provide that apart from these there should be no restriction on adult franchise.

(Messrs. Gokulbhai D. Bhatt and V.C. Kesava Rao did not move their amendments.)

Mr. President: I understand that the Mover of the Resolution is in favour of accepting the motion of Mr. Khurshed Lal to delete the second proviso to Clause 22. Would someone else move it in the absence of Mr. Khurshed Lal?

Mr. K. M. Munshi (Bombay: General): With your permission I shall move it, Sir. I move the amendment to delete the second proviso to Clause 22. The reason for its deletion is that in the Union Constitution Committee’s Report there is going to be provision to set up an All-India Election Tribunal which will have the power of superintendence, direction and control of all elections not only Federal, but also Provincial. Therefore there is no need to give this power to the Governor to act in his discretion.

(Messrs. Kala Venkata Rao and K. Santhanam, did not move their amendments.)

Mr. H. V. Kamath: My amendment suggesting a new proviso to Clause 22 seeks to take this vital issue of separate electorate and weightage out of the purview and jurisdiction of Provincial Legislatures. But I am told that the Report of the Advisory Committee on Minorities is dealing with this and other cognate matters. Therefore until their report is taken into consideration there is no point in moving my amendment. I do not therefore press it. It runs as follows:

“That the following be inserted as proviso (3) to Clause 22.

‘that no Provincial Legislature shall at any time make provision for separate electorates or for weightage to any particular class or community in the Provincial Legislature and other elective bodies of the Province.’”

(Shri T. A. Ramalingam Chettiyar and Shri Kala Venkata Rao did not move their amendments.)

(Prof. Shibbanlal Saksena did not move his amendment.)

Seth Govind Das (C. P. and Berar: General): *[Sir, there are two amendments in my name. One is number 4 and the other No. 5 in the Supplementary List No. 3. I am not moving No. 4. I want to move No. 5 with runs:

“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 of and in conformity with the instructions laid down in the Schedule annexed hereto so as to maintain uniformity in these matters throughout the Indian Union.’”

I feel there is no need to say much about it. I only wish that all the items from (a) to (i) given in this clause should be uniformly applied throughout India. When India as a whole is going to be one Union, the application of these clauses for one province in one way and for another in a different way, would not be proper. That is why I have submitted this amendment and I hope that Sardar Patel will accept it.]*

Mr. President: There are two amendments by Mr. Kala Venkata Rao. (There was no reply). All the amendments have been moved. Those who wish to speak either on the resolution or on the amendments may do so now.

The Honourable Sir N. Gopalswami Ayyangar: Mr. President, I wish to say a few words on the first amendment that was moved by Mr. Santhanam. I find some difficulty in fitting it in. His proposal is that in Clause 22 after the words “from time to time” the following words be inserted: “in accordance with the procedure for amending the Provincial Constitution”. There is a good deal of substance in what he said on the merits of the amendment itself. Apparently, his scheme is that the first provisions which are to be enacted in connection with the matters mentioned in the clause should find a place in the constitution itself, either in the body of the constitution or in the schedules to the constitution. If these schedules are framed, then you can give the provincial legislature power to amend these schedules. He apparently wants to safeguard against amendments being carried out in haste or perhaps in pursuance of ideas which may have had sway for the time being but perhaps would not be quite acceptable in the long run. So he wants to provide that amendments, to such schedules to the constitution should

*[]*English translation of Hindustani speech.

be made by the provincial legislature only according to the procedure prescribed for amending the provincial constitution. I can understand that. But what this clause says is that the first laws relating to these matters are to be made by the provincial legislature. "The provincial legislature may from time to time make provisions with respect to all or any of the following matters." If you allow the provincial legislature to make the first provisions in regard to these matters without placing, I take it, any particular restrictions on its powers, it does not stand to reason that you should provide that amendments to such provisions should be made only according to the procedure prescribed for amending the constitution. I think, Sir, that this clause will have to be redrafted in order to carry out his purpose. We can say that the first provisions with regard to these matters should find a place in the schedules to the constitution and then you can give powers to the provincial legislature to amend these schedules according to the procedure prescribed for amending the provincial constitution.

There is also another difficulty. I believe the draft Model Constitution does not provide for any procedure for amending the Provincial Constitution. That also we may have to provide for. I would suggest that so far as Mr. Santhanam's amendment is concerned, we hold it over so that we may produce a draft which will carry out the purpose Mr. Santhanam has in view. I feel that the amendment as moved by him should not for the present be accepted but that we should take it up later on.

Sir Alladi Krishnaswami Ayyar: Sir, I support the suggestion of Sir Gopaldaswami Ayyangar that the consideration of this clause might lie over. If the first delimitation of constituencies is by ordinary law, it stands to reason that the later changes also may be by ordinary law but on the other hand if the delimitation of constituencies is provided in the constitution, later amendments will be constitutional amendments. Therefore if in the schedule you indicate how exactly the constituencies are to be delimited, then of course provision will be necessary that later changes will be by constitutional amendments. Under the circumstances, I would request Mr. Santhanam not to press his amendment at this stage.

Sri M. Ananthasayanam Ayyangar (Madras: General): I do not find any insurmountable difficulty for which my friends there are trying to find a solution. The existing legislature will continue to function even after the constitution comes into force under the transitional provisions contained in Part IV. Otherwise immediately on the constitution coming into force it will not be possible to allocate the territorial constituencies and allow elections to take place. In the meanwhile demarcation of territorial constituencies will have to be made through the legislature in existence. The present legislature will continue under Clause 2 of Part IV. "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)." The previous provision is: "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." Therefore the legislature will continue and that legislature can be entrusted with the duty of delimiting constituencies. Mr. Santhanam's amendment may be accepted without any difficulty about the initial delimitation of constituencies. That can be safely entrusted to the legislature.

Mr. President: Does any other member wish to speak on the resolution or the amendment?

Mr. M. S. Aney (Deccan States): I would like to speak on the second amendment of Mr. Santhanam.

Mr. President: It is 6 o'clock and if there is any long discussion, we might adjourn. I would like to know whether there are any other members who want to speak.

Some Honourable Members: Yes.

Mr. President: Then, before we adjourn, I would like to make one or two announcements. This morning's newspapers published the news that the aeroplane in which one of our Honourable Members, Mr. Jagjivan Ram and his two secretaries were travelling crashed near Basra. I am glad to be able to inform Honourable Members that the, injury which Mr. Jagjivan Ram has sustained is not of a very serious character, although I understand there has been a fracture of one of the knee caps. I am told it will not take very long for him to recover. Let us hope that he will be able to come back soon and participate in our deliberation.

It was represented to me by some members that they would like to have a little more time for sending in amendments to the Union Constitution Committee's report and as we have not finished the consideration of the Provincial Constitution, I am prepared to give a little more time for them to send in their amendments, say, by tomorrow evening 2 o'clock so that the amendments could be printed and circulated before Monday 2 p.m.

There is one another announcement. From Monday next I propose that we sit at 10 o'clock and go up to 1 p.m. We shall now adjourn.

Mr. K. M. Munshi: The Minorities Sub-Committee would meet on Monday, 10 o'clock was the time announced.

Mr. President: It has been represented to me by several members that while this House is sitting it will be most inconvenient for the members who are members also of the Minorities Sub-Committee to be sitting and they would not find time to devote to both the sessions which will have to be held from day to day. This meeting of the Minorities Sub-Committee has already been announced, but in view of this representation, I should like to postpone it for some days and would fix another date which will suit all the members. The exact date will be announced after consulting the convenience of all the members.

The Honourable Sardar Vallabhbhai Patel: If the Minorities Sub-Committee meeting is postponed, the Advisory Committee's report and everything else will have to be postponed. They should be allowed to adjust their time and have their meetings in the afternoon.

Mr. President: I understand that other members have got engagements in the afternoon. It will, be very difficult for the members to attend. In any case we cannot have it on Monday at Ten. We shall fix some other date. The Minorities Committee will have to sit in the afternoon.

The Honourable Pandit Jawaharlal Nehru (United Provinces: General): May I know why 10 o'clock is fixed?

Mr. President: For various reasons to suit the convenience of Members.

The Honourable Pandit Jawaharlal Nehru: It is neither here nor there—either earlier or later.

Mr. President: I thought that most of the members considered it convenient.

We shall announce another time for the meeting of the Minorities Sub-Committee. Then we meet on Monday at 10 o'clock.

The Assembly then adjourned till Ten of the Clock, on Monday the 21st July, 1947.

APPENDIX
CONSTITUENT ASSEMBLY OF INDIA

*Report of the ad hoc Committee on Clause 8 of Part I of the
Provincial Constitution*

The Committee recommends that—

Clause 8 be re-drafted so as to read:

“It shall be competent for a Province, with the previous sanction of the Federal Government, to undertake, by an agreement made in that behalf with an Indian State, any legislative, executive or judicial functions vested in that State, provided that the agreement relates to a subject included in the Provincial or Concurrent Legislative List.

On such an agreement being concluded, the Province may, subject to the terms thereof exercise the legislative, executive or judicial functions specified therein through the appropriate authorities of the Province.”

Signed on behalf of the Committee.

NEW DELHI
July 17, 1947.

B. L. MITTER,
Chairman

**Members of Committee:*

1. Sir B. L. Mitter (*Chairman*).
2. Sir Alladi Krishnaswami Ayyar.
3. Mr. Ismail Choundrigar.
4. Sir A. Ramaswami Mudaliar.
5. Dr. B. R. Ambedkar.
6. Mr. K. M. Munshi.