

Thursday, 17th July, 1947

**Volume IV**



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

## **OFFICIAL REPORT**

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CONSTITUENT ASSEMBLY OF INDIA

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## CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 17th July, 1947

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The Constituent Assembly of India met in the Constitution Hall, New Delhi at 3 P.M., Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

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

**Mr. President:** Yesterday we referred Clause 8 of the Report on the Principles of a Model Provincial Constitution to a small Committee. I understand the Committee has been able to arrive at some conclusion and it has made a report. The Report will be circulated today and the clause will be taken up tomorrow. We will now take up Clause 9.

#### CLAUSE 9

**The Honourable Sardar Vallabhbhai Patel** (Bombay: General): I move clause 9. It reads:

“There shall be a Council of Ministers to aid and advise the Governor in the exercise of his functions except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.”

This clause provides that there shall be a Council of Ministers who will aid and advise the Governor in the exercise of his functions, but there is an exception in which certain reservations are made—where, according to the constitution proposed, he is required to exercise the functions or any of them under his discretion. About those matters there will be reference in subsequent clauses and therefore the Note is merely explanatory. I shall therefore simply move Clause 9 without the Note or clauses under the Note because they are provided for in the other clauses. Sir, I move Clause 9.

**Mr. President:** I have received notice of a number of amendments to this clause. I would like to know how many are proposed to be moved.

**Shri V. I. Muniswami Pillay** (Madras: General): The Minority Committee's Report has not yet come and I am not therefore moving my amendment, just now.

(Messrs. R. K. Sidhwa, H. J. Khandekar and H. V. Kamath did not move their amendments, and other members who had given notice of amendments were absent.)

**Mr. President:** As regards the amendment given notice of by Mr. Pocker Saheb Bahadur, it is an amendment to an amendment which has not been moved. It cannot therefore be moved. As none of the amendments has been moved, the original clause which has been moved is open for discussion (*After a pause*). As no one desires to speak on it I will put the clause to vote.

[Mr. President]

The question is:

“That Clause 9 be adopted.”

The motion was adopted.

CLAUSE 10

**The Honourable Sardar Vallabhbhai Patel:** Sir, I move that Clause 10 be adopted. It runs as follows:

“If any question arises whether a matter is one for the Governor’s discretion or not, the decision of the Governor in his discretion shall be final.”

Some doubts have been raised about the language, but I think if the principle is accepted the question of language may be attended to at the time when the final draft is made. I think there will be no objection on the ground of any defect in the proposition as a principle. Sir, I move.

The motion was adopted.

CLAUSE 11

**The Honourable Sardar Vallabhbhai Patel:** Sir, I move that Clause 11, be adopted. It runs as follows:

“The question whether any, and if so, what advice was tendered by the ministers to the Governor shall not be enquired into in any court.”

Obviously the advice tendered by a Minister to the Governor cannot be a matter to be taken into the judicial court. So it is a simple clause which requires no explanation. Sir, I move.

The motion was adopted.

CLAUSE 12

**The Honourable Sardar Vallabhbhai Patel:** Sir, I move that Clause 12 be adopted. It runs:

“The Governor’s Ministers shall be chosen and summoned by him and shall hold office during his pleasure.”

This also is a proposition which requires no elucidation and I think there will be no controversy on it. Sir, I move.

**Mr. Aziz Ahmad Khan** (United Provinces: Muslim): \*[Mr. President, the Resolution which is before you says that the Governor shall appoint his own Ministers and they shall continue as such at his pleasure. I move the amendment to the Resolution that the Governor’s Ministers shall be elected by the Assembly by means of the single non-transferable Vote. The Resolution moved by the Honourable Sardar Patel does not follow the English Parliamentary system of appointing the Ministers. According

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\*[ English translation of Hindustani speech begins.

to the English Constitution, after the general elections are over, the number of parties in the House of Commons is ascertained and they try to find out which is the largest single party; or whether there is any such party which combining with other parties can become dominant. This is the party which is authorized to appoint the Prime Minister. He recommends the names of his colleagues, who on his recommendation form the Cabinet. This is the method which has been proposed for our constitution as well. But the method which I am advocating in my amendment, is not a novel method. There are many places in the world, where this method is prevalent. For instance, Sir, if you enquire, it would be found that today this system is prevalent even in America. The appointment of Ministers is not made by nomination. Here individual vote is taken and this is the way in which Ministers are elected. Similarly, Ministers are elected in Switzerland and Austria. Sir, if you think over it, you will find that in all countries where religious groups and sectional interests exist, this system has been adopted, in order that all the parties on whose behalf the Ministers would govern should have a hand in their appointment, to secure the confidence of every party in the Cabinet. After mature consideration, I am convinced that the English system of democracy does not suit India. We have witnessed the result of this system of democracy, which has caused disturbances and bloodshed in this country. Had the system of Government been the product of our own genius, most probably such mutual hatred and differences would not have been created or intensified. Therefore it is in the fitness of things that the Ministers should be elected by general votes. This system will have the advantage that the Ministers will have sympathies of their voters. This system will be consistent with the principles of democracy. But if this is not accepted and the English system is adopted then I am afraid it would not suit us.

Sir, very few of the present parties are based on any political principles. Most of them depend on religious faith. These religious groups have existed for centuries and have continued as such from time immemorial. It is known to one and all that the untouchables are living here for scores of centuries. It is absurd to think that no sooner the constitution is framed, the religious groups will disappear and parties will be formed on political and economic principles. It would be a dangerous experiment to think of planting English system of democracy, where Party affiliations are based exclusively on political principles or of creating those conditions here. Countries like Austria and Switzerland, where they had their differences, have adopted this system of election for the Cabinet with success.

Naturally, whenever a person votes for electing a particular candidate as Minister, he has at least some expectations from him for the future and he (the Minister) in return shall do at least same good to him. Therefore, it would be much better to adopt such a system for India. Due to English education, we could not develop any system of our own. The English people thought that the system with which they have achieved this end, should be applied to India also to attain its object. They acted accordingly and succeeded in their endeavour. We should discontinue the methods adopted by the English people and should try to adopt a better system. I am sure, that the election of the Ministers by general votes would be much better. Therefore, I hope that my amendment will be accepted by the House.

One word more. When the Resolution was about to be move we were not given opportunity to give much thought over it otherwise the amendment could be more properly drafted. Therefore, you need not care for the words of my amendment. As a matter of fact you should not look to the details of my amendment. If you agree with the principles underlying my amendment, the confusion about the details will auto-

[Mr. Aziz Ahmad Khan]

matically disappear. Please look to the principles of the amendment. In the original Resolution, there is no mention of the nomination of the Ministers, nor is there any mention of their election in the amendment Sir, if you would approve the principles underlying my amendment, then at the time of the final draft, the whole thing can be put in proper form.]\*

**K.T.M. Ahmed Ibrahim Sahib Bahadur** (Madras: Muslim): Mr. President, Sir, I beg to move:

“That at the end of the amendment to Clause 12 (just proposed by Mr. Aziz Ahmed Khan), the words ‘and shall be responsible to the Provincial Legislature’ be added.”

This is a very simple amendment based on the fundamental principles of all democracies. The Ministers, Sir, should be responsible to the Legislature. That is a very fundamental principle affecting the rights of the entire population.

Now, the principles enunciated in the Report are such as to invest the Governor with all powers of the State. In short, all the powers of the State are concentrated in one single person and, I submit that such concentration of power in one single person is dangerous to the State, however eminent he may be and by whatever democratic methods he may be elected. It is true that it is stated in the Note to Clause 9 that the Governor, in the proposed constitution, is to be elected by the people, so that he is not likely to abuse his discretionary powers. But it must be admitted that it is dangerous to invest one single person with an such powers, whatever may be the method by which he is to be elected.

Further, it is also stated in Clause 13 that generally the Governor will be guided by the conventions of responsible government; but there is no compelling necessity on his part to follow any such convention. And, if there is any difference of opinion as to whether he has followed the conventions or not, the Governor’s act cannot be called in question. It is obvious that the relationship of the Ministers with the Governor and their dealings with him should not be left to the entire discretion of the Governor. I would point out that such a procedure is entirely foreign to all principles of democracy. If this is allowed to stand, then the Ministers will be only advisers and the Legislature will be only an advisory body. Therefore it is that we want that the Ministers should be responsible to the Provincial Legislature and that they should be elected by the Provincial Legislature concerned. There is otherwise every possibility of the Governor abusing his powers and encroaching upon the rights of the people in more ways than one. It is to ensure that proper democratic government may be carried on that we want that the Ministers should be responsible to the legislature and through the legislature to the electorate, and not to one single man. The principle is that the Ministers should be responsible ultimately to the electorate through the legislature and not to one single man by whatever method or majority he may be elected. I hope the House will accept this amendment as it is based on fundamental principles.

**Sri M. Ananthasayanam Ayyangar** (Madras: General): I am not moving my amendment, but wish to speak.

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] \*English translation of Hindustani Speech ends.

**Mr. President:** The Honourable Member may speak later.

There is another amendment of Begum Aizaz Rasul to this amendment of Mr. Aziz Ahmad Khan. Will you please move it?

**Begum Aizaz Rasul** (United Provinces: Muslim): Sir, I wish to move that at the end of the amendment moved by Mr. Aziz Ahmad Khan to Clause 12 the following words be added:

“and shall hold office during the life of the Assembly.”

Sir, my purpose in moving this amendment is that the Ministry should be a strong and stable Ministry and that it should not be subject to the whims and fancies of the party or legislature to which it is responsible. Sir, in England and France the Ministry is responsible to the legislature. We see what happens in France every day. The Ministry is weak and the Cabinet has fallen several times. That always happens where there are more than two parties in the legislature, and therefore in India which is so young in democracy, where the sense of responsibility is neither ingrained nor so well developed, we should have a strong and stable Ministry which can initiate long-range policies and be uninfluenced daily by the repercussions in its party. We do not want a repetition of what is happening in France in our country. Sir, my experience of the last ten years after the introduction of the Government of India Act of 1935 has been that in the provinces where the Ministers are responsible to the legislature and are liable to fall on a vote of no-confidence by their party or the provincial legislature, they cannot put forward any long-range policies. As I said before, often they are influenced daily by party feelings and are therefore necessarily weak. I therefore feel that a Ministry that has been elected by the legislature should have a long life in which it can formulate its policies and not be influenced by party factions. We may have the American system under which the President nominates his executive, but our country may not be ready for that. But the Swiss system under which the Legislature elects the executive for a certain period during which it is irremovable is to my mind the best form of government for the provinces, because the Ministers who have once been elected by the legislature cannot be removed by a vote of no confidence in it by the legislature. I feel therefore that the Swiss system is the best *via media* that can be accepted by us in this country, keeping in view the political and other conditions that are prevailing here and will continue for a long time to come. The system of the single non-transferable vote is to my mind the best system that can be adopted for the appointment of the executive because in that all interests will be represented and no party in the legislature will have any occasion to feel that it is not represented, and therefore I strongly support the amendment that has been moved by Mr. Aziz Ahmad Khan.

I also wish to point out that the best thing for a Ministry is to have its life synchronous with the life-time of the Assembly so that it can be an irremovable executive.

My other point is that in the constitution we are framing, we are giving such strong and wide powers to the Governor who will be an elected Governor, that there is no need for another head of the State, because the Governor is there and will be in a position to allot portfolios, to represent the State on ceremonial occasions and to preside at meetings and to co-ordinate the work of the Ministers. All these things will come under the duties of the Governor and the Ministers who will be responsible men elected by the legislature will be able to initiate their policies



[Begum Aizaz Rasul]

and work out their long-range policies not at the whim of the party but from their own strong positions. My experience is that where the Ministers are the representatives of a party, it is impossible for them to carry on the day to day work and the administrative work of the province uninfluenced by their party members. This necessarily means that the Ministry is weak and the administration suffers on this account because it is natural that Ministers who have to keep their party men pleased, have to do many things which are not good from the administrative point of view. Therefore I hope that this amendment of mine which is moved with a view to having a strong and stable government in the provinces will be accepted.

(Mr. B. M. Gupta did not move his amendment.)

**Mr. President:** I think these are all the amendments. Now, the clause and the amendments are open to discussion.

**Seth Govind Das** (C. P. and Berar: General): \*[Mr. President, I oppose Mr. Aziz Ahmad's amendment and also the two amendments to his amendment. He has cited the example of America where Ministers are elected and has suggested to us to adopt, not the British, but the American democratic system. I would like to point out that the Ministers in America are not responsible to the legislature. If we look at the constitutions of those countries where a system of responsible government is prevalent we shall find that the Prime Minister is chosen there by the majority party of the legislature and he chooses his colleagues. The Governor approves the list of the personnel of the Cabinet submitted to him by the Prime Minister.

The conditions in the countries, where the system of responsible government exists, clearly indicate that responsible government cannot function unless there is joint responsibility. And there cannot be joint responsibility until and unless the Premier chooses his colleagues. Mr. Aziz Ahmad has stated that it is the English system of government which is responsible for all the strife in this country. I venture to tell him that a system which has not yet been put in operation here cannot be held responsible for the conditions prevailing in our country. This system of government can be adopted only in independent countries and so long our country is not free it is wrong to say that the said system is at the root of these troubles. If anybody is responsible for what is happening in the country it is the Muslim League that advocates the two nation theory, that from time to time raises the cries of 'Islam in danger' and proclaims that there are two civilizations and two cultures in the country. It is wrong to say that the system of responsible government which we intend to establish here is responsible for these serious disturbances in our country. And then Mr. Aziz Ahmad should look to the system adopted so far by the Muslim League. The President of the Muslim League is elected—Qaid-i-Azam is elected. But the personnel of the League Working Committee is chosen by the President. The general body of the League does not elect the working committee. The Congress too follows the same system: We elect our Rashtrapati (Congress President). The provincial Congress committees elect their presidents. We authorise the Rashtrapati and the presidents of the provincial Congress committees to choose the personnel of their working committees. Having all these in view, I beg to advise that we must not follow the American system of government, if we desire to establish responsible government here. The Ministers in America are not responsible to the legislature—the House of Representatives or the Senate. We want

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\*[English translation of Hindustani Speech begins.]

responsible government. We want our Ministers to be responsible to our legislature. If we desire to have this system, it is essential that Ministers should not be elected on the principle of proportional representation by single transferable vote.

The other two amendments to this amendment are amazing. One of them says that the Ministers so elected by single transferable votes should be responsible to their legislature. I do understand how the Ministers will be individually responsible to the legislature.

The other amendment put forward by one of our sisters is that the Ministers should hold office during the life time of the Assembly. I fail to understand how the Ministry can hold office during the life time of the Assembly when the majority of the members of the legislature have no confidence in them or the Premier. The amendment and the amendments to it are contradictory.

Therefore, concluding my speech I would again say that the system of Government prevalent in Britain must be followed here if we have to establish responsible government on the eve of our getting independence.]\*

**Mr. President:** A request has been made to me by a Madras Member that all the speeches which are delivered here in Hindustani should be translated into English for his benefit, because he is the mover of one of the amendments. I am afraid it is not possible to comply with that request because, in the first place, we have got no arrangement for an interpreter who would be able to translate all these speeches which are delivered in Hindustani, and I also know that there are certain members who do not know English and they would insist upon English speeches being rendered into their language, whatever that language may be. I think we had better to take the limitation of individual members as the limitation exists and proceed with the debate as it has been going on, in the language in which the speaker wishes to speak.

**The Honourable Mr. Jaipal Singh** (Bihar: General): Mr. President, I feel very much like a Madrassi. Much of what has been said by my predecessor on the other side and the immediate predecessor in this side has been lost on me. I fully agree with them that, as far as possible, the speakers should speak in the language understood best by the majority of the members of this Assembly, but, if it were left to me to speak in a language in which I could express myself best, I do not think there is any one at all here who would understand me. I would definitely prefer to speak in my own language *i.e.*, in an Adibasi language. There is no member here at all who would understand me. Mr. President, you, coming from the same Province as I do, would find it difficult to discover an interpreter. I do hope that in deference to the need very strongly felt and in the light of what has been said on the floor of the House, it will be appreciated that it is better to talk in a language which the majority of us could understand.

I come here to oppose the amendment. But before I oppose the amendment I would like to say a word about a note, despite the advice given by the Honourable Sardar Vallabhbhai Patel that we are not to talk on any of the notes,—I know that you will permit me to say that it is most unfortunate that a paragraph such as this should ever appear on a serious document.

I will read it:

“It is to be noted that the Governor, under the proposed constitution, is to be elected by the people, so that he is not likely to abuse his ‘discretionary’ powers.”

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]\*English translation of Hindustani speech ends.

[Mr. Jaipal Singh]

My elementary logic fails to understand the argument of this. That a man who is elected on a popular vote will not abuse his discretionary powers is beyond by comprehension. I shall now proceed to the arguments that have been advanced by the proposer and the seconder of the amendment. It is unfortunate that the serial arrangement of these clauses are as they are. I think the proposer and his charming supporter would have thought otherwise had Clause 14 come in the place of Clause 2. In Clause 14 you will see that the Schedule which is to be equivalent of the Instrument of Instructions is provided for. I think a great deal of the apprehension would be completely removed were we to know what the Schedule or the Instrument of Instructions would be.

Hitherto we have been talking about responsible Government. What is responsible government but that the head of the executive of the province would be bound by the technique and methods of responsible government? There will be no question whatever of his being arbitrary. Admittedly, as far as the language of the clauses that we have so far considered goes, it looks, as though arbitrary powers were going to be vested in the Chief executive of the province. Surely, Mr. President, that is not to be the case if we consider that there is such a thing as the Instrument of Instructions, the Schedule as we prefer to call it now, by which he is bound. That being the case, the fears that have been expressed by my friends who have spoken from the other side would be remote.

Sir, I myself have been wondering what our constitutional experts have been up to. I have been, as a layman, trying to understand whether they were drafting, even for this intermediate stage, a constitution which was to be democratic. Up to date, I have not been convinced,—at least the language has been such that I have not felt that somehow or other the technique or this democracy was going to be democratic. But as far as this particular clause is concerned, I have no doubt whatever in my mind that the Governor must act in a responsible way.

**Mr. Mahomed Sheriff** (Mysore State): (Began to speak in Hindustani).

**B. Pocker Sahib Bahadur** (Madras: Muslim): On a point of order, Mr. President, may I request you to ask the speaker who knows English to speak in English, Sir?

**Mr. Mahomed Sheriff**: You have already given the ruling Sir.

**Mr. President**: I am afraid I cannot force any speaker in a particular language. It is left to him to choose the language in which he wishes to speak.

**B. Pocker Sahib Bahadur**: In that case, may I appeal to the Honourable speaker to speak in English with which he is very familiar, I know?

**Mr. Mahomed Sheriff**: I would prefer to talk in Urdu. \* [Mr. President, I fully support the amendments moved by Maulvi Aziz Ahmad Saheb, Ibrahim Saheb and Begum Aizaz Rasul Saheba. The purpose of these amendments is to limit the powers of the Governors and to give the Legislative Assembly a preference in the election of the Ministers. The main purpose of these amendments is to introduce democratic principles in administration. Almost every day we repeat our allegiance to the democratic principles by proclaiming that in all things we should always try to popularize them. In the light of this, it seems necessary to see that the Governor's powers are limited. You might be knowing what is the system prevalent in Switzerland and other progressive countries. I beg to submit that probably in the opinion of

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\*[English translation of Hindustani Speech begins.]

Sardar Patel Saheb there is no harm in giving full powers to the Governors who are elected by the people. I would submit that a Governor, however, powerful he may be, must be in a position to carry out the wishes of the people. The principles to which the movers of the amendments have referred, are really the best principles and in the name of these democratic principles, I appeal to you all to become ardent supporters of democracy and standard-bearers of its principles. I strongly support these amendments and appeal to you to support them]\*

**Mr. N. V. Gadgil** (Bombay: General): Mr. President, I want to oppose this amendment. I have heard that this amendment is calculated to secure a better prospect for democracy. As I understand, democracy is not an end in itself. It is a method, a mechanism to secure certain desired and desirable results.

Now what are the objectives for which we are framing this constitution? These objectives have been defined in the resolution that has been passed. Apart from that, I take it that there will be several parties in the country and each party will be defining its own aims and objectives. These aims and objectives will constitute the programme of that party. Obviously, these aims and objectives are not embodied in the programme for the mere sake of telling the public that these are our aims and objects. The idea is to implement them when the party gets into power. If the party gets into power, that party cannot execute it, cannot implement it, unless that party is charged with the full executive responsibility of the Government.

Apart from this, I submit to this House that so far as the political trends in this country are concerned, we have been brought up in an atmosphere which has been most conducive to the establishment of what we are generally accustomed to term as Parliamentary Responsible Government. That Government can only function in certain given conditions. One of the conditions is that there must be at least two big parties and the Leader of the House must have the confidence of that party which is in the majority in the House. In other words, the Leader is really the man who counts and if you do not give him any chance to choose his colleagues, if you do not throw on his shoulders the responsibility of implementing the programme on which the electorate has returned that party. I think it is destructive not only of democracy, but of the few chances of any progress. Any coalition is not calculated to help progress in the country; much more so is the case if we accept the amendment. A coalition follows some understanding, some agreement, whereas under the amendment, strange and even mutually exclusive elements may be brought into the executive.

Apart from that, just consider what will be the effect if Ministers are chosen by the process of single transferable or non-transferable vote. What is there to guide the Governor for the purpose of allocation of portfolios? On the one hand, we are all anxious to see that he must be merely a constitutional head. On the other hand, if you accept this amendment, you will be giving him unlimited powers which he can use, not for the benefit to democracy but for the benefit of his own autocratic rule. Suppose out of nine people who constitute the executive, the majority party may get four, another party may get two, a third party may get one and two other groups may get one each. If the Governor is so powerful, he can certainly allocate the most important portfolios to those who belong to the minority groups. Is that position calculated to the better progress of this country? Is it calculated to further the programme on which the majority party has been returned? I think, if you accept this amendment, you will be doing the greatest injustice to the

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] \*English translation of Hindustani Speech ends.

[Mr. N.V. Gadgil]

electorate, to the party that has put its programme before the electorate and on which it has been returned. The electorate is justified in expecting that that programme will be implemented and if you make that implementation impossible by accepting such an amendment, I think you will not be doing justice to the electorate. In other words, I wish respectfully to submit that it is dangerous from every point of view. It is unfair to the electorate. It is unworkable. It is giving too much power to the Governor. There is nothing in this amendment to which I can bring myself to reconcile.

One of the supporters of the amendment said that it will secure a strong and stable government. So far as the strong government is concerned, I think it cannot be secured. That it will be a weak government there is no doubt. In the absence of collective responsibility there will neither be continuity nor consistency in administration. If you accept the amendment that they will hold the office till the life of the Assembly, it may be stable but it will not be progressive. The very idea of a democratic government and a responsible government is that if the elected members even during the statutory period do something, act in a manner which is calculated to forfeit the confidence of the country, there is some provision in the constitution whereby dissolution is possible but that also is considerably affected. I therefore submit that the House will be perfectly justified in throwing out this amendment.

**Kazi Syed Karimuddin** (Berar: Muslim): \*[Mr. President, I support the amendments moved by Mr. Aziz Ahmad and Begum Aizaz Rasul. For the last three days I am seeing that whenever a Leaguer makes a speech, in reply he is told that till the other day he was raising the slogan of religion in danger and so we (the Leaguers) can never support socialism and democracy. Mr. Kamath has even said that socialism need not be taught to Gandhiji and Pandit Jawaharlal Nehru. I say to Mr. Kamath that since long he has been trying to teach it to them but probably they understand it too well. Notwithstanding all this, Mr. Kamath needs to be told what an Urdu poet has said:

“Dead drunk, during the night and penitent in the morning; I continued to be a drunkard. Yet did not lose Heaven.”

Mr. Kamath can play a hero but not by maligning the Muslim League. Besides this there is one other noteworthy fact, and it is this: whenever a proposal is put forth from the Congress side, you are always disposed to accept it but whenever any thing comes from the Muslim Leaguers, howsoever beneficial it might be, it is discarded on the pretext that nothing emanating from Pakistanwallahs can be accepted. This Constituent Assembly is no political platform; it is a constitutional body. Here, the Muslim League can put forth its point of view and every member has the right to do so”. The amendment before us is “that the Ministers may be elected by the House”. The British are quitting India, but their shadow is not leaving us. You say that British rule and the British executive is based on democracy. This is quite wrong. You should look to the Constitution of U.S.A. and Switzerland. Since 1921 and particularly after the Act of 1935, what I have seen is that the majority party always shows scant regard for the opposition. I maintain that the result of majority rule has been that the Ministry tends to be prejudiced against the opposition parties—be it communist party or any other. For keeping the Ministry in the saddle, the majority party needs cajoling. I say majority rule is accompanied by nepotism and favouritism. With these evils eradicated it is difficult to keep the party supporters intact. Hence to say that majority rule is based on democracy is quite wrong.

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\*[English translation of Hindustani Speech begins.]

Mr. Aziz Ahmad's amendment is to the effect that the Ministers should be elected. What we want in India is a constitution of the type by which she may be classed as one of the Progressive States of the world. India is passing through a very delicate phase when our mutual differences need to be settled. Mutual conflict should be stopped, and there is only one way of doing it. It is this: the representatives of every party in the House should be included in the Ministry.

The majority party will get greater representation, while the minorities will get less number of seats. Under these circumstances, as Begum Sahiba has observed, the House should last as long as the Ministry continues in office. There is nothing new in it. This has been made plain in the constitution of U.S.A. By doing this, executive judiciary and legislature would be divided into three parts. Legislature would lay down the policy. The function of the judiciary would be to check the executive from exceeding its limits, and the duty of the executive is to carry out the policies laid down by the legislature.

What we find today is that there are different religions, various parties and numerous classes of people in the country. The best method is that each and every party should be represented in the government. That would ensure the stability of the government and mutual conflict would also be eliminated. Therefore I support the amendment which has just now been moved and hope that the House will accept it.]\*

**Mahboob Ali Baig Sahib Bahadur** (Madras: Muslim): Mr. President, Sir, I have very great pleasure in supporting the amendments moved by my friend Mr. Aziz Ahmed Khan Saheb and the further amendment by Begum Aizaz Rasul. In doing so, it will not be out of place if I observe that the constitution, the draft of it, the report of it which is placed before us, except for a few questions such as the election of the Governor and the term of office of the Advocate General, looks as if it has been copied from the 1935 Constitution in regard to the Provincial Autonomy. Sir, if we want our constitution to be democratic, we should see that the legislature, the Cabinet and the Executive, reflect the several sections of the people.

If we are relying upon what is called the parliamentary system of democracy, it is the considered opinion of the pandits of constitutions that that is not a democratic system of government. The model that ought to be before us is the model of the Swiss Government. A system of government can be called democratic only when all the sections of the people are represented in the legislature. We are now suffering from a handicap, because we do not really know what would be the method of election, what would be the constituencies and so on and so forth. Anyhow, I take it the constituencies will be territorial constituencies, and that at the same time some reservations will be made in regard to communities or interests which will enable them to return their men to the legislature. Now, Sir, if that is the method you are going to employ, and that is necessary in the peculiar circumstances of the provinces in India, then people from all sections of the province and persons of different interests will be elected to the legislature. If you are accepting that method of representation of people to the legislature, with reservations of seats by whatever method, by weightage or by some other way—it does not matter at all by which method it is done, it does not arise now—then it necessarily follows that in the Cabinet also the minorities or different sections should find a place. That is what is obtaining in the Swiss Government, and that is the reason

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]\*English translation of Hindustani speech ends.

[Mahboob Ali Baig Sahib Bahadur]

why it is said that the Swiss Constitution is the most democratic, because it represents all sections and all parts of the country in its Legislature, and not only in its Legislature, but also in its Cabinet. The method followed in Switzerland is this. The Legislature elects its Ministers by a certain method which ensure that all the minorities are represented. The method is called proportional representation by non-transferable vote. That is what we want here also in order that the constitution may be democratic, and provisions should be made for the return of certain interests and minorities. Then it necessarily must follow that these people must find a place in the Cabinet also.

The amendment of Begum Sahiba is a consequential one to the resolution moved by Maulvi Sahib. We are not asking for any nomination to the Cabinet. We are only asking for election by a certain method which will enable minorities and interests to be returned to the Cabinet. This method of election by proportional representation is considered to be the best. When the Legislature consists of say 50 to 500 or 300 members this would not be a cumbersome method. By adopting this method you will be following up the principle that you have enunciated, that minorities and certain sections of the People must be represented and the constitution must be a democratic one. To say that, when a Minister has been elected, that he can be removed on a vote of no confidence goes against that very principle. There is some conflict which has not been observed, between the amendment of my friend Mr. Ibrahim and the amendment of Begum Sahiba. Mr. Ibrahim says that the Ministers must be made responsible. If the amendment of Maulvi Sahib is accepted, then it means the Minister can be removed. But it is very necessary, Sir, that those Ministers who are elected by the Legislature and who are elected in order that the Cabinet may reflect the various sections, Christians, Muslims, or whoever they are, different interests, the tribal areas and so forth, all these sections, then they must continue for the term of the Legislature. That is consequential.

I expected, Sir, that there would be some innovations in the constitution that is going to govern us in the future. But I find that except for the provision that the Governor shall be elected, there is nothing new. I appeal to the House through you, Sir, that in order to lay the foundation of that confidence which you intend to create in the minds of all sections of the people, Muslims, Hindus, Tribals etc., this democratic method of framing the constitution should be given full consideration by this House.

**Sri S. Nagappa** (Madras: General): Mr. President, Sir, I support the original clause moved by the Honourable President of the Committee that the Governor's Ministers shall be chosen and summoned by him and shall hold office during his pleasure. While doing so, I have very few remarks to make. Clause 14 lays down that in the appointment of his Ministers and his relations with them, the Governor shall be generally guided by the convention of responsible Government as set out in Schedule so and so. In the latter part of this Clause 14, it is said that the validity of anything done by the Governor shall not be called in question on the ground that it was done otherwise than in accordance with these conventions. Now, Sir, especially for minorities instead of keeping power in the hands of the Governor to choose his Ministers it would have been better if it had been kept in the hands of the Legislature. For instance the Governor or the Premier may select Ministers of his own choice, men who will implicitly obey the Premier, or the Governor. But such people will not command the confidence of the particular section of the people whom they are expected to represent. Therefore if it had been something like the Swiss model, leaving the Executive to be formed by the Legislature, then every

group and every member of the Legislature will have a chance to select their own representatives. Such representatives will be true and effective representatives. But there comes the trouble. If the Cabinet is formed in this manner, then in the Cabinet there will be divergent elements, one pulling on one side and another pulling on a different side and so there will not be homogeneity in the Cabinet. I do see the point. In order to avoid that situation the Cabinet must be made to select its Premier, because then the Ministers of the Cabinet cannot but follow the Premier.

Now, Sir, no doubt in the draft constitution it is said that the Governor will choose his ministers but it has not been said that the Governor must choose his Executive or the Ministers in consultation with the leader of the majority party. For instance, under the 1935 Act you are aware what the Governor of Sind did. He did not call the party which had a slight majority. There were two parties practically equal but the Governor took his own choice. He selected whom he thought fit. He did not call the really representative and majority party. Therefore such powers vested in the hands of the Governor are sometimes dangerous. No doubt these Governors are elected by adult suffrage and yet that is exactly the reason why a Governor should not be vested with this power. As he is elected by adult suffrage he might belong to a majority party. It is not human nature to be above party politics. He may be a Governor, but yet he is a human being. He knows that he has been elected by the people and he knows which party supported him in the elections and which did not. Therefore there is ample scope for the Governor to abuse or misuse his powers. So by this means you will be not only taking out some of his powers in forming the Cabinet but at the same time you will be going a long way to placate the minorities. They will have their say and they will have their true and effective representation by means of the single transferable vote. Otherwise, if it is left to the choice of the Governor, if there are two equal parties or if there is a slight difference, instead of calling for the party which is slightly in the majority, the Governor may call, as the Governor of Sind did, the other party to form the Cabinet. If such Cabinets are formed where is the guarantee that they will be steady and strong governments? Day after day the Government will be interested only in safeguarding their position and will not be in a position to lay down policies nor be able to see that the people of the country are benefited by them. In my opinion, I think the powers vested in the Governor are so large that it gives cause to suspect. I do not say that the Governor who has been elected under adult franchise will misuse his powers. People will not go to the extent of selecting such people but we should remember that after all a Governor is a human being and has also his own likes and dislikes. So there is scope for him to err and that is what I want to point out.

The other point is, as I said in the beginning, it would have been better that instead of allowing the Cabinet to be formed by the Governor the Legislature forms the Cabinet. Then every member in the Legislature will have the right to elect his own representative. The question in that case will be whether such a constitution will work. All sorts of elements will be there in the Cabinet and the question is whether there will be individual or collective responsibility. No doubt in every cabinet or team work they are expected to have joint responsibility. If the members of the Cabinet selected their own Premier, to that extent at least they will be responsible and will be having joint responsibility.

Hitherto the Governor used to act in selecting members of the minority communities according to the Instrument of Instructions. Under Clause 14 there is a note which says that this schedule will take the place of the



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Instrument of Instructions now issued to Governors. I am glad that that provision is there and I hope that this clause under this schedule will give some scope but it would have been better if it had been otherwise.

**Dr. B. Pattabhi Sitaramayya** (Madras: General): Mr. President, a sudden impulse has overtaken me as, I have been following the debate with great interest and I am particularly glad that our reverted old friend from U.P., Mr. Aziz Ahmad Khan has inaugurated this discussion. He has given us an opportunity for a full-dress debate upon the question of responsible government versus fixed executive and the simple lacuna that he left in his amendment has been filled up by our extremely learned lady Begum Aizaz Rasul Saheba. I am therefore tempted to take part in this discussion, not upon the lower plane upon which it has been inaugurated but I want to take the whole discussion up, if I may mention it boastfully, to a higher plane.

We all judge on facts and conditions as they have existed during the last few years how that Provincial Autonomy which had been introduced by the Act of 1935 has been working. Unfortunately or fortunately the historical conditions of the present day are an inheritance of the past 30 or 40 years. We have inherited certain conditions and we have been the victims of those conditions. We have not been able to escape from the tyranny of those conditions we have not been able to write upon a *tabula rasa* or to begin afresh with a clean slate or with clean hearts. We have inherited these things which have been the creation of the British Government. You are fully aware how in 1906 during Lord Minto's time His Highness the Aga Khan had led a deputation and negotiated for separate electorates. The vicious seed grew big and bore fruit in 1916 in the form of the League-Congress concordat which was more or less incorporated in the Montagu Reforms. We were hoping that with the lapse of a decade these vicious separate electorates would come to an end, but we have not succeeded. Every time we had an opportunity of revising the political system the tree took its roots deeper and deeper and bore worse and worse fruit; at last we have reaped the final fruit, the final stage in which India functions as a corporate body and Pakistan is destined to function, let us hope only for the present, as a separate *Sthan*.

Under the circumstances it is for us to think afresh to bring a new outlook upon the whole problem and see whether these separate electorates should continue. What purpose do separate electorates serve now? The whole political question has to be taken together as a comprehensive problem for fresh consideration. How are they going to serve the purpose of the 7 per cent. of people in Madras, the 9 per cent. in Bombay, the 4½ per cent. in C.P. and the 14 per cent. in the U.P.? They will only provide ground for perpetual complaint. We are therefore looking to joint electorates. Let us forget all the antagonisms created—and inevitably created, and created for no fault of ours—in the past. Let us forget the very words—the two names, Congress and League. Let us have a Congress League Organisation. Or let us drop both these names and have a democratic, republican or socialistic organisation any appellation that you can adopt—based entirely on political grounds. It will eschew all religious predilections.

Indeed the “minorities” have always addressed themselves abroad to the three questions of freedom of religious worship, faith and customs and preservation of language script and culture. It is in this unfortunate land through the intervention of the British Government that the Minority question has been complicated by mixing it with political matters. But

now that period is over. We are entering upon a new period in the development of our country. Therefore, when new joint electorates are formed and when you and I have the same political programme and the bone of contention is "agricultural income" vs. "limitation of land", that is to say economic questions hold the field, then we shall have common ground to tread upon. Then I can go to Janab Mahboob Ali Baig's house and address his mother and he may come to my house and address my wife, we can invite each other to dinner, we can exchange the best of cordialities in life and become brothers once again. Then there will be no question of the Congress people alone exclusively monopolising the seats in the Government. There will be Christians, Muslims and Parsees in our Government. Anybody worthy of being selected will be selected by virtue of his service to the country—not only by virtue of his jail going; this will be forgotten very soon; it is almost being forgotten. Indeed the old traditions had better be created. Let us not judge the future by the past. Let us draw a veil upon the past, and begin the future anew. Let us be able to form political organizations on a new basis so that it will not be said that the Muslims as a minority have been neglected and ignored. No such thing will happen in the future. The complaints that have been advanced from this rostrum have been absolutely unassailable. It is a pity that people should be compelled to speak in such tones. But that is a consequence of the inevitable past for which we were not wholly responsible though it must be admitted we were partly responsible. We have all come together again under one banner and on one platform. We shall pursue one programme and there will be no difficulty whatever hereafter.

**Chaudhri Khaliqzaman** (U.P. Muslim): On what point is the Honourable Member speaking, may I know? I do not think the amendment refers to any matter about which he is speaking.

**Dr. B. Pattabhi Sitaramayya:** I am much obliged to my friend for having pointed out this little matter. The relevancy of the question is that the whole amendment is based upon the complaint that the Muslims form a small minority—it refers to all other minorities—and that therefore one section being in a vast majority by sweeping the polls, will on the principle of responsible government sweep the Ministries and that the minorities will suffer. I say that no such thing will be allowed to come into existence when the parties are formed on political principles and a new alignment has taken place.

**Kazi Syed Karimuddin:** But none of the speakers supporting the amendment has referred to the suffering of the minorities whereas my friend is referring to it.

**Shri Balkrishna Sharma** (United Provinces): He has seen through your game.

**Dr. B. Pattabhi Sitaramayya:** We shall have new conditions to deal with and we shall not be influenced by our unfortunate experiences in the past. I would therefore suggest that this question should be looked at altogether from a new angle of vision. It will then be possible for us to see how we can form political parties on purely political principles without any communal bias and see how we shall be able to work out a new formula which is really based upon responsible government. This proposal which has been made is based on the bad experience of the past. That experience is a forgotten dream and we shall inaugurate a new chapter in our political development which will visualize conditions of an

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altogether different character. I therefore urge, Sir, that this amendment may be thrown out.

[Shri D. Govinda Doss (Madras : General): then spoke in Telugu.]

**B. Pocker Sahib Bahadur:** Mr. President, in what language is the Honourable Member speaking?

**Mr. Ram Narayan Singh** (Bihar : General): I rise to a point of order. I want to know whether the Honourable the President understands the language in which Mr. Govinda Doss is speaking and if not, how he controls the speaker.

**Mr. President:** I do not think it is necessary for me to control the speaker. I think he is speaking within bounds. (*Laughter.*)

**An Honourable Member:** I want to know from you, Sir, whether the Honourable Member is supporting or opposing the motion. I do not understand him and I do not think any Honourable Member knows or understands whether he is in favour or against the motion before the House.

**Mr. President:** The speaker suffers from one kind of limitation and other members suffer from some other kind of limitation. The speaker is ignorant of some languages and others are ignorant of his language. All suffer. I will allow him to speak under the rules in the language in which he is speaking. I take it he is unable to express himself in English and so wishes to speak in his own language.

[Shri D. Govinda Doss, finished his speech in Telugu, thanking the President for upholding his right.]

**Chaudhri Khaliquzzaman :** Mr. President, Sir, the amendment which has been proposed by Mr. Aziz Ahmad Khan consists, to my mind, of two parts. One refers to the election of Ministers and the other, to the method of election of those Ministers. Unfortunately, it appears to me that some of my friends here have overlooked the principle altogether and have applied their minds only to the other portion of the amendment which refers to the method of election of Ministers. I can assure Members here that, so far as the question of minority rights are concerned, we know that there is a Minorities Committee and that we shall have the opportunity of discussing our rights there. Having seen and gone through the Report of the Provincial Constitution Committee, we came to the conclusion that every possible effort was made by the Minorities Committee submitted to see that nothing was said in the Report which may be repugnant or inconsistent with the recommendations of that Minority Committee. We are to that extent grateful to the Members of the Provincial Constitution Committee whose Report is under consideration. And I would beg of you all to discard from your mind the feeling that there is any hidden motive behind this amendment. It may be that once the principle of election of the Ministers is agreed upon, whether it should be by non-transferable or single transferable vote or otherwise it will present no difficulty. But here is a question of principle. We feel that having given wide powers to the Governor, we must have an irremovable Ministry. I shall, for that proposition, not refer to the American Constitution or the Swiss or any other Constitution. To my mind the question must be looked at purely from the point of view of the genius of the people, from the point of view of what will suit the genius of the people better.

Now, we have not for long enough worked the Constitution of 1935 which really gave us some power in the provinces. When for the first time the Congress assumed power, it worked there only for two and a half years, and this time it has only just taken over power. We have some experience in other fields of activities. For instance in the local bodies, the method of election has been tried in a different form. What has been happening to the municipal and district boards? Everyday there is a vote of no-confidence against the chairman of district boards and municipalities. One does not know what to do with the powers given to them. The Governors of the provinces are themselves tried of it all. Therefore they want to go back on that system. First two-thirds majority has been introduced, and I do not know whether the legislatures within provinces may not have to introduce three-fourths majority. Otherwise the spectacle of the chairmen of the municipalities and presidents of local boards going out everyday will be witnessed. Within these few days one Ministry in Madras has fallen. This experience of ours leads us to conclude that it would be in our interests to have an irremovable executive. Otherwise, with the change of slogans there may be change of Ministry. Our people are apt to be taken in by slogans. You say that the cry of Pakistan. Two nation. theory and all that was caught by the masses. This shows that your people are apt to follow any lead and any slogan. For this reason I say you should make provision to protect your Ministers. You should protect them against these shifting parties and predilections of the groups in the legislatures. This is a pure and simple proposition which we have placed before you for your consideration. To think that it is merely a case of single transferable or non-transferable vote which stinks in the nostrils of some of my friends is not right. I can assure you that if you accept the principle, we shall accept any alternative method of election. Therefore do not make that method of election the test for the acceptance or non-acceptance of this amendment. It may be that you are dissatisfied with this amendment. You may reject it. But, to say that this amendment has been moved because we want to get over some particular mode of election or representation is to misjudge it. I can assure you that, personally, I believe that no Governor who has been chosen by the vote of the people will ever have a Ministry without representatives of the people, whoever they may be, Muslims or non-Muslims. I believe it. Therefore it is not from that point of view that we have asked for the consideration of this amendment.

With these few words I support the amendment moved by Mr. Aziz Ahmad Khan.

**Mr. K. M. Munshi** (Bombay : General): Mr. President, Sir, I have only a few words to say with regard to the views expressed by my friend, Mr. Khaliqzaman. Mr. Aziz Ahmad Khan's amendment, as the House has seen, wants the ministry to be elected by proportional representation. The two amendments that have been moved are mutually contradictory. Mr. Ahmed Ibrahim Sahib says that the Ministers shall be responsible to the provincial legislature. That means that the ministry elected on the basis of proportional representation would be responsible to the legislature, which in other words, means that after a vote of censure that Minister should resign. On the other hand, the amendment moved by Begum Aizaz Rasul wants that the Minister chosen by proportional representation should continue during the life of the Assembly. The intention of the second amendment is that the Minister should be elected by proportional representation and should continue till the end of the life of the Assembly. Now I want the House, Sir, to envisage the implications of this scheme. The system of proportional representation, as everyone knows, is this that instead of having the support of the majority in the House, you must get the first vote of a small group, and nothing fragments the political life of

[Mr. K.M. Munshi]

a country as proportional representation in the selection of ministries. I will give a concrete instance. If there is a House of 300 members, the majority party of, say, 151 must support all the ministers in order that they may retain office, but under P. R. if there are seven ministers and you have got a voting strength of 300 anyone who gets the first votes of 35 or 40 members will be entitled to become a minister. Therefore the House will not look at the ministry as a consolidated body of representatives elected on the general principles and policies which the ministry has to carry out, but it will be fragmented into sections, each trying to get as many first votes as possible. I am not saying this as a matter of theory. After the Treaty of Versailles at the end of World War I, on account of President Wilson's partiality for proportional representation, several of the Central European countries introduced proportional re-representation and lived to be sorry for it. Instead of putting the national good before them, the ministers were more busy securing the first votes of a small group by raising a very narrow isolated cry. Therefore, the nett result of proportional representation will be that the ministry instead of being broadbased on general principles, all ministers standing together and having collective responsibility and interested in doing good to the province as a whole, it will consist of representatives of different groups having different ideologies and different policies. This will invariably result—the 35 votes will fluctuate—in a coalition with practically differing policies, and when a coalition comes, we know the result. Perhaps, members know what happened and what is happening in France during the last 25 years. In France, it has been more or less the fashion to have coalition ministries and the result has been that ministries have been falling like castles of cards. During the last eight or ten years there have been more than twenty-two ministries. Some ministries have lasted only for eight or nine days. At the time when Hitler entered Austria, there was no ministry in France. When he entered the Rhineland, there was a care-taker ministry in France, and nobody would become the Prime Minister. This is the situation where you get coalition ministries. This is the greatest danger to which democracy is prone,—this danger of coalition ministries. There is only one way in which democracy can be practised effectively and that is by having a majority party. If we have majority party, we must have one, and that can only be done first by having the group of ministers selected by the majority party, secondly by collective responsibility and lastly by the control which the Prime Minister exercises over that homogenous ministry. As the House knows very well Sir, in England the power of the Prime Minister is absolute and that is what has made the British Government so very strong. It is the Prime Minister who decides as to who should be a minister, and can dismiss a minister, and can control his party by saying: "I will get the House dissolved and go to the country unless the party supports me". The mechanism of responsible government which we have therefore been following to a large extent in this country is the British model, and a departure of this kind will weaken the ministry to a large extent and the provincial legislature will be nothing else but a fragmented house which cannot devote itself to the good of the province. Therefore. Though the system of proportional representation looks so innocent that some people have got a fascination for it, it has led to the unmaking of democratic institutions in more than one country in the world. This amendment of Mr. Aziz Ahmad Khan is really speaking destructive of democracy. If you have a democratic system, then you must carry it out to this extent that if the House passes a vote of censure against the ministry, the ministry must be prepared to resign. If it continues, the ministry will be naturally unresponsive to the fluctuations of public opinion.

There is only one argument which my friend, Mr. Khaliqzaman placed before the House of which I would like to refer. He says, 'Large

powers are going to be given to the Governor. If so, give the ministers much larger powers". There is no doubt that under Clause 9 which the House has adopted, certain discretionary powers have been given to the Governor. What the House has not yet before it, is the full extent and scope of these discretionary powers. It must be realised that in democracies which are young, which are yet to gain experience times of grave menace to public tranquillity would require a steadying factor, a strong steadying factor, and the discretionary powers that are sought to be given to the Governor are only in times of grave menace to public tranquillity. If democratic institutions run their normal course if public tranquillity is not disturbed in a very serious manner, then there is no difficulty at all; the ministry will function. The Governor will step in only when there is a grave menace to public tranquillity. Then everything must be subordinated to the supreme need of public tranquillity in the province. At that stage the Governor who will have the added authority of being returned on the basis of adult franchise will step in and say "my first and last function is to restore peace and tranquillity". This country has suffered immensely by the failure of the supreme authority in certain provinces to exercise their power in moments when public tranquillity has not only been threatened, but has been destroyed. It is only for that contingency that the discretionary power is given. Till that event, which will be very rare—let us hope it will never occur at all—the ministry will function as a responsible ministry and there is no reason why these amendments should be accepted by the House.

**Shri Phool Singh** (United Provinces : General): \*[Mr. President, after the speech of Mr. Munshi, I have not much more to say against these amendments except that the elections should not be held by proportional representation. Such a ministry can never be dubbed as a Coalition Government, which is always based upon a compromise between different parties, but when the ministry is elected by its own men on the votes of its own party, it rests with the ministers whether they act jointly or not. The proposal of Maulvi Aziz Ahmad Sahib and the amendment of Begum Sahiba have filled in the gap, if any. That is, if ministers, so elected, take to quarrelling among themselves, and the actions of one are negated by the other, then the legislature would not have even the power of removing such ministry. In other words, ministers may do good or evil but they would continue for the full term of the legislature. This is something beyond my comprehension. As I have said earlier, I do not wish to waste any more time of the House. Party government may be a progressive government. Coalition Government may be suitable for any particular objective, but a Government which is neither a party government nor a Coalition Government cannot fulfil any object, rather it can succeed in defeating it. I do not hesitate to say that such a government can be of no use to any country. I dare say that the movers of these amendments have taken their "clue" from the present Interim Government.

If we do not want to entangle the provinces in the difficulties of which this Interim Government has been the victim, then it becomes the duty of each one of us to vehemently oppose these amendments. There is no time to be lost in such foolish experiments. We have had enough of sacrifices, and now it is only the party government which can be beneficial for this country. With these words I oppose both these amendments.]\*

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\*[English translation of Hindustani Speech begins.

] \*English translation of Hindustani speech ends.

[Mr. Phool Singh]

**Mr. Shankar Dattatraya Deo** (Bombay: General): I move closure.

**Mr. President:** I have the names of half a dozen of more members who have expressed their desire to speak.

**Many Honourable Members:** Closure, closure.

**Mr. President:** But if the House wishes to close the discussion, I shall have no objection. There is a motion for closure. I cannot make an exception in favour of one member. There is a closure already moved. I put the motion for closure.

The motion was adopted.

**The Honourable Sardar Vallabhbhai Patel:** Sir, this innocent clause has covered a very wide and controversial field of debate and yet I think appetite of some of the speakers has not been satisfied. I thought that this would be passed without any debate. The principal amendment which has been suggested would cut at the root of the whole structure of the constitution. We have adopted the British parliamentary model—cabinet system—in this model provincial constitution. The Mover of the amendment contemplates a different model which would, if passed, probably, require us to reconsider the whole constitution. It has been suggested that during the last few years we have considerable experience of the present type of constitution. I do not know whether that is a correct statement of fact, because the constitution under which we were working was a complicated constitution in which the elective system, the services, the Governor's powers, the checks and counter-checks provided in the constitution were such that when the constitution was passed, it was suggested in the debate that it was humanly impossible to work that constitution and even the angles would fail. In spite of that they worked that constitution. The difficulties experienced in the working of that constitution and the bitter experience which some of us had to go through was not due to this particular system of selection of ministers or the prime minister being authorised to select his ministers but to various other causes which need not detain us. I have no intention of touching upon those questions. Somehow or other, some speakers have touched on that question, but I do not propose to enter into that controversy. Election by proportional representation of ministers is a system which is contrary to the whole framework of this constitution. It cuts at the very root of democracy and therefore does not fit in here. The experience which we would gain in the working of such a constitution would be much worse than the experience that we have gained in the working of the present constitution. Therefore, I suggest that it is a very dangerous innovation to introduce in this constitution and we should not have it here.

Then, the question of the electorate, separate or joint, and other questions are to be considered by separate committee, as I have already explained in my introductory speech. Therefore, I do not propose to touch on those questions.

It has been suggested that the Governor has got very wide powers I do not think that in this constitution, the Governor has got such wide powers as under the present constitution the foreign Governors have got. The present constitution was such that we had not only no elected Governor, by adult franchise, representing the will of the people, but a foreign Governor with an Instrument of Instructions, designed to protect

foreign interests. The experience derived from the working of that constitution cannot be compared with the constitution that we have proposed here. Whether in the working of this constitution that we propose we will have pleasant experience and smooth working or not, will depend much upon the manner in which we work the constitution. Constitutions are always broken by the people who have got a desire or a will to do so. We are not wanting in instances where if the constitution was worked in such a manner that a Prime Minister or a Minister was found irremovable by a vote of the House, he could be removed by the bullet. So, it is no use saying that an irremovable executive will be safe. If the irremovable executive functions in such a manner, then the want is real goodwill to work a good constitution and a spirit to work any constitution that you have got.

Here, we have contemplated collective responsibility, joint responsibility. Any election of Ministers by the method suggested by the Mover of the amendment would mean individual responsibilities and individual Ministers who would go their own way. Each Minister has only to work for five, seven or ten votes which he can probably obtain by means which may not be very desirable and the whole machinery would be liable to be corrupted. Therefore, I purpose that the motion that I have moved should be adopted.

I do not wish to deal with the other amendments because they are contrary to the main amendment, as has been already explained by some of the speakers and therefore, the amendments should be rejected and the proposition that I have moved should be accepted.

**Mr. President:** It has been moved:

“That the Governor’s Ministers shall be chosen and summoned by him and shall hold office during his pleasure.”

To this an amendment has been moved that for Clause 12 the following be substituted:

“The Governor’s Ministers shall be elected by members of the Provincial Assembly by the system of proportional representation by single non-transferable vote.”

There are two amendments to this amendment. The first amendment is that at the end of the amendment to Clause 12 by Mr. Aziz Ahmad Khan (Item 57), the following words be added.

“and shall be responsible to the Provincial Legislature.”

The second amendment is that at the end of the amendment moved by Mr. Aziz Ahmad Khan to clause 12 (Item 57), the following be ended:

“and shall hold office during the life of the Assembly.”

The procedure which I propose to follow is, in the first instance to take vote on the amendments to the amendment. If any of these two amendments is accepted, that becomes the principal amendment. Then I shall put to vote the amended amendment and if it is accepted, it becomes part of the clause. Then, I shall put the clause as amended before the House.

I now put to vote the amendment to the amendment, namely that the following words be added at the end of the amendment:

“and shall be responsible to the Provincial Legislature.”

The amendment was negatived.



**Mr. President:** I now put to vote the second amendment to the amendment, namely, that the following words be added at the end of the amendment:

“and shall hold office during the life of the Assembly.”

The amendment was negatived.

**Mr. President:** I now put the original amendment of Mr. Aziz Ahmad Khan to vote.

The motion was negatived.

**Mr. President:** I now put the original clause to vote.

The motion was adopted.

**Mr. President:** We will now go to Clause 13.

#### CLAUSE 13

**The Honourable Sardar Vallabhbhai Patel:** I move Clause 13.

“13. (1) A Minister who for any period of six consecutive months is not a member of the provincial legislature shall at the expiration of that period cease to be a Minister.

(2) The salaries of ministers shall be such as the Provincial Legislature may from time to time by Act determine, and, until the provincial legislature so determine, shall be determined by the Governor:

Provided that the salary of a Minister shall not be varied during his term of office.”

This is a proposition which is hardly controversial and I do not think there will be any debate on it. I move this proposition for the acceptance of the House.

**Mr. President:** There are several amendments of which I have received notice. I will call on the Movers to move their amendments.

(Messrs. R. K. Sidhwa, V. C. Kesava Rao and H. V. Pataskar did not move their Amendments Nos. 59, 60 and 61.)

**Mr. R. K. Sidhwa** (C. P. and Berar: General): My amendment No. 62 states that the salary of the Ministers shall not be more than the Governor's salary or even the same as the salary of the Governor. It is very appropriate that we passed yesterday that the Governor should be elected on adult franchise and also that he should be given some powers. Therefore, he will be the first citizen of the province and his dignity should certainly be considered to have increased. Therefore it is desirable that the Ministers' salary should be less than the salary of the Governor. I am told that this is a very healthy amendment, but it would not be proper to put it in the constitution. Therefore, Sir, I do not move it.

(Mr. Biswanath Das' amendment was not moved.)

**Mr. President.** These are all the amendments of which I have received notice. The original proposition is now open for discussion. Those who wish to say anything on it will do so now. (*After a pause*).

No one wishes to say anything. I now put it to vote.

Clause 13 was adopted.

**Mr. President.** We go to Clause 14.

#### CLAUSE 14

**The Hon'ble Sardar Vallabhbhai Patel :** Sir, I move that:

“In the appointment of his ministers; and his relations with them, the Governor shall be generally guided by the conventions of responsible Government as set out in Schedule..... ; but the validity of anything done by the Governor shall not be called in question on the ground that it was done otherwise than in accordance with these conventions.”

Now a Schedule according to the traditions of responsible Government will be framed and put in. This also is a non-controversial thing and I move the proposition for the acceptance of the House.

**Mr. President:** I have received no notice of amendment to this clause. I shall put it to vote, unless any member wants to speak.

**B. Pocker Sahib Bahadur:** On a point of order. Is it not necessary that the Schedule should be before the House before this clause is passed.

**Mr. President:** The idea is that the Drafting Committee will prepare the Schedule and it will come before the House. This is only to lay down the principle here.

**B. Pocker Sahib Bahadur:** The clause refers to a Schedule and in the absence of the Schedule, are we in order in passing the clause with reference to a Schedule which we have not seen?

**Sri M. Ananthasayanam Ayyangar:** Sir, when we pass this clause, we only approve of the principle that a number of things may be regulated by convention. That is all that is now put before the Assembly. So far as the schedule is concerned, it is open to some members to object that there should be no convention whatever. But the object here is that the conventions may be changed from time to time according to the exigencies and in the light of experience; otherwise we can say later on that it is a cumbersome or a lengthy procedure and we can modify the constitution as a whole. It is intended that the schedule may be modified even without the modification of the constitution. So far as the conventions are concerned, the schedule will certainly be placed before the Assembly and there will be opportunity for the members to strike out or add anything. At this stage the object is to ask the acceptance of the House for the principle that some conventions are to be put there in the form of a schedule which may be modified in the light of experience. The schedule will not be passed without the knowledge of the Assembly.

**Haji Abdul Sathar Haji Ishaq Sait** (Madras: Muslim): I do not think the argument that my friend has raised can be accepted. If we pass this clause just as it is, it means that we pass the schedule also. The schedule is mentioned there. I say if somebody wants to write down a schedule and attach it, it certainly will mean that the schedule has been passed. It is alright when he says it will be brought here. There is nothing to prevent somebody to write down a schedule and attach. That is why I suggest, that the schedule should not be mentioned at all. The sentence runs like this:

“In the appointment of his ministers and his relations with them, the Governor shall be generally guided by the conventions of responsible Government.”

Stop there. Do not mention ‘as set out in the schedule’. Then you go on to say:

“but the validity of anything done by the Governor shall not be called in question on the ground that it was done otherwise than in accordance with these conventions.”

Do not mention the schedule at all. When it is ready it can be placed before the House so this difficulty can be obviated and I suggest that this should be done.

**Mr. M. S. Aney** (Decan States): Mr. President, Sir, I really find it somewhat difficult to support the proposition as it stands here. It is an accepted rule that any proposition that is put before the House for consideration should be self-sufficient and self-explanatory. It must explain what it means and it should not stand in need of something else to be found somewhere and not placed before the House. I know what is wanted is that there should be a recognition to the principle that certain conventions

[Mr. M. S. Aney]

have to be observed but you cannot put the proposition before the House and say 'I want the consent of the House that certain conventions will have to be observed in connection with the relation between the Minister and the Governor and so on'. The word 'certain' makes the whole thing ambiguous and an ambiguous proposition cannot be put before the House. That is the difficulty. Therefore, the best thing would be, and it would not be difficult to get the consent of the House when the schedule will be properly prepared, that the schedule may be attached to this and then the proposition can be brought at a later stage. Then it will be complete in itself and I do not think this House, after reading the schedule, will find it difficult to give its consent but to put the proposition as it is to ask them to sign what may be called a kind of black cheque. What that schedule will contain we do not know. It is stated here that the present Instrument of Instructions will take the place of this schedule. I do not know whether the Committee sitting there will consider all the conditions contained in the present Instrument of Instructions. That has yet to be considered. The Committee was appointed to draft this Report and I think the Committee must have considered even the Instrument of Instructions. If it was satisfied with that, it would have added it as a Schedule. The very fact that that is not done means that the Committee did not think it worth while to embody the whole thing as it is and if that is so, we do not know what part of that Instrument of Instructions is going to be added.

Under these circumstances, this proposition means nothing more than taking the consent of the House to the conventions which at present are supposed to be Contained in the Instrument of Instructions. The draft to be prepared by the Committee is, of course, not known to this House. It is therefore unfair to the House to be asked to give its consent to the proposition as it stands. I therefore submit that it is better if the Honourable mover will withdraw this proposition for the present and reserves his right to bring in the proposition for consideration when the schedule is completed.

**Mahboob Ali Baig Sahib Bahadur:** Sir, this Clause 14 does not provide for the Schedule to which it refers, to come before this Assembly. It simply states:

"In the appointment of his ministers and his relations with them, the Governor shall be generally guided by the conventions of responsible Government as set out in Schedule....."

Therefore, in the first place, there is no guarantee that this Schedule will at all come before us. Further, in the margin, it is noted that the conventions of responsible Government should be observed. We should at least know what are the conventions and the conventions of which Government are to be observed. Are they to be conventions of the Swiss Government or the British Government or the conventions established by Indian Governments? Or are they to be conventions that may be established hereafter?

Further, in the note it is stated:

"Schedule..... will take the place of the Instrument of Instructions now issued to Governors."

We find there is no definiteness about the whole thing. We are asked to vote upon or to consider a question, the most important and most relevant part of which—the Schedule—we are not aware of. And what is more, there is not even the guarantee that this Schedule will ever come before us. I submit, Sir, that it is not fair that we should be asked to consider such a question at this stage. I submit that this clause may be

taken up after the Schedule has been prepared. As it is, we are not told that the Schedule will be the same or similar to the Instrument of Instructions; if we had been told that, then there would have been some guidance for us. We could at least have referred to the instrument of Instructions, and there might have been something definite to go by. Members who have the necessary patience, could have gone through the Instrument of Instructions and helped in the discussions. But as it is, the present proposition is bad because of its indefiniteness and it is vague, and also it is not self-contained and self-explanatory, as my predecessor has submitted.

**Dr. P.S. Deshmukh** (C. P. and Berar : General): Sir, I think there is considerable substance in the objections that have been raised against the clause as it stands. It is impossible to pass it in the shape in which we find it. We cannot possibly agree to the clause even as a matter of principle, without the Schedule being there. But this does not mean that the whole clause should be withdrawn or brought before this Assembly on some other occasion, as suggested by Mr. Aney. I suggest that the omission of a few words near about the word "Schedule" may meet the situation. We could say:

".....conventions of responsible Government as may hereafter be set out...."

If this suggestion is accepted the consequent change in the wording is very little. This, I think, will meet the situation completely, and we will not then be forced to the position of having to agree to a Schedule which is not before us. This will also provide that hereafter, whatever we may like to have in the Instrument of Instructions shall come before us, and then there will be ample opportunity, to consider them. This slight amendment that I have suggested, will, I think, meet the objections that have been raised here. Without it, we are entitled to object to it. We should not I think, Sir, permit anything so vague and uncertain as the present proposition to pass.

**Rai Bahadur Syamanandan Sahaya** (Bihar : General): Sir, I do not see where is the indefiniteness about the proposition contained in Clause 14, which we are discussing now. While introducing this Report, the Honourable Mover made it quite clear that the purpose generally was to get the House to accept the main principles on which the Provincial Constitution will be framed. So far as this particular clause is concerned, it is clearly laid down that the Governor shall be generally guided by the conventions of responsible government as set out in Schedule so and so. Then it goes on further to say that the Schedule so and so will take the place of the Instrument of Instructions now issued to Governors. Now, Sir, this Instrument of Instructions is already in existence and those of us who have gone through these instructions will agree that there are directions in it as to how Ministers are to be chosen. It is all in the Act of 1935. (*An Honourable Member*: "That Act is not before the House.") It is not a question of the Act being before the House or not. The purpose of this Report is only to lay down the general principles and is intended to ascertain the wish of the House with regard to them. We can later raise the point whether they are a departure from. We can later raise the point whether they are a departure from the existing ones. But as long as we accept the proposition that the majority party must be called upon to form the Ministry, I do not think there is any objection to our considering this Clause 14.

**B. Pocker Sahib Bahadur** : Sir, I wish that this House is taken more seriously than for its sanction, saying that the Schedule will come later and asking for its sanction, saying that the Schedule will come later on, I think, the matter is not given the seriousness that it deserves. I know there are matters in which this House is not taken seriously because we are here asked to sit down and listen to speeches which we do

[B. Pocker Sahib Bahadur]

not understand and are asked to pass things which we do not understand. In the same manner this clause has been brought here and we are told that the schedule will be coming later on, but the clause may be passed. Even the Mover of the motion does not know what the Schedule is. I say this is absolutely irregular, and it is for you, Sir, to rule it as out of order.

I would just refer to two suggestions made by two members. One is by Mr. Haji Abdul Sattar, to remove the word Schedule, and retain the word conventions. But without knowing what the conventions are, and their nature, it will be absolutely improper and irresponsible for this House to pass this clause. The same remark applies to the modifications suggested to this clause by the previous speaker. I would therefore appeal to you, Sir, as President of this House, to protect the honour and self-respect of this House by acceding to the request of Mr. Aney to adjourn consideration of this clause.

**Mr. Naziruddin Ahmad** (West Bengal: Muslim): Mr. President, Sir we are asked in short to agree to a Schedule that is not in existence, one of the speakers has pointed out that the Schedule will be on the lines of the Instrument of Instructions to follow. But the Note, to the clause if I may be permitted to refer to it, merely says that the Schedule will take the place of the 'Instrument of Instructions'. There is no indication that this Schedule will be on the lines of the Instrument of Instructions, or will be similar to it. I submit, Sir, that it will be asking the House to agree to something which is undefined and unknown. It will be just like asking a bridegroom to agree to go through a marriage ceremony without the bride being present or even being known, on the promise she will be found and selected later.

**Prof. Shibban Lal Saksena** (United Provinces: General): Sir, already the House has passed sub-clause (3) of Clause 6 which mentions a Schedule which is not reproduced there. Nobody raised any objection at this time. Besides, the Honourable Mover said at the very beginning that these are only principles to be accepted and the details will follow later. So I do not think there is anything to object to in the clause. We should not waste the time of the House in raising such frivolous objections.

**Shri Mahavir Tyagi** (United Provinces: General): Sir, I think Honourable Members on both sides have made out a good case. In the absence of the Schedule which will take the place of the Instrument of Instructions now issued to Governors I think the proposal is incomplete. We must consider a complete proposal. I therefore submit that the Mover, Sardar Patel, may be pleased to tell us if any Instrument of Instructions have been "now issued to the Governors". The word "now" introduces, a new complication. I know the Instrument of Instructions issued to Governors before the popular ministries came into power in 1937. Is that what is referred to or has any new Instrument of Instructions been issued to Governors now with the change of Government? The word "how" seems to show that some new Instrument of Instructions may have been issued, though I have heard of none. I think the old one is meant here, and the word "now" has either crept in by chance or perhaps I am reading a wrong meaning into it. Anyway in the absence of details as regards the Instrument of Instructions it will be not proper to pass this as it is. My proposal therefore is that we should pass the proposal but not the note below it, and in place of this note we may say that the Schedule will be considered later. Since we are passing only the principles of our provincial constitution we can say that the Governors will have such and such powers as are mentioned in the Schedule, and of course the Schedule part of it we can consider later. No Schedule will be a regularly

recognised schedule unless it is passed by this House. And that we can consider afterwards. But we can give these powers to the Governor and we do not complete that here; we will say that the Schedule will follow. So I think we can pass this *minus* the note which may be taken out and another note may be substituted or the whole clause may be postponed. I think my friends are right when they ask to give your ruling. It is no part of the Mover's duty to withdraw or to press the motion. It is a point of order which you have to decide, whether in the absence of the Schedule it will be fair for the majority in the House to press this to a vote, because the House will have to vote without knowing the exact words of the Instrument of Instructions. I therefore submit that you, Sir, will have to decide this point of order.

**Mr. President:** I have said on a previous occasion when a question was raised with regard to these notes that these notes were not formally put to the House and they were not accepted by the House. They were only intended to give an indication of the meaning of the clauses that were moved and we need not in any way be bound by what is contained in the notes. The clauses have therefore to be considered on their own merits without reference to the notes.

**An Honourable Member:** It is not the note; it is the clause itself.

**Shri Raj Krushna Bose** (Orissa : General): Sir, since we have heard so many objections to the passing of this clause and since there is some force in many of these objections I suggest that the Schedule should not be passed without the contents being known to the House. I submit therefore that, as we did in the case of Clause 8, this clause also may be referred back, redrafted and brought up tomorrow before the House so that the objections raised by the dissentient members may be met.

**The Honourable Sardar Vallabhbhai Patel:** Sir, I am afraid the preliminary observations, that I made while moving my motion for consideration of this memorandum have not been followed; otherwise, I do not see any point in the objection that has been raised. I said more than once that this memorandum contains only the principles and if these principles are adopted the drafting will take place afterwards. It has been suggested that there is no guarantee that the Schedule will come. There is as much guarantee about it as the guarantee that the House will meet tomorrow. The clause says that there will be a Schedule; and that will come afterwards when the whole thing is ready. The Schedule will accompany the draft that will be put before the House when there will be ample opportunity to scrutinise the Schedule, to add to it or modify it. I do not see how this principle can be called imperfect, you have to adopt a principle which is perfect in itself as the clause stands. Now you cannot have a guarantee for everything; this is a very simple thing and there can be no guarantee for it. One Honourable Member said that the House should be taken seriously. I think the debate should be taken more seriously. And if the debate had been followed more seriously I think all this debate on this clause would not have taken place. It is a simple proposition in which it is stated that the Governor will follow the conventions and for that a Schedule will be put hereafter. You know that the Governor is liable to impeachment and he must know that he acts under a specific responsibility and he will know his duties. Therefore, the Schedule must contain the specific duties that he has to perform. Therefore what the conventions are should be specified fully and in detail. When fixing these general principles we have not gone into the details of these conventions and therefore they will follow later, when you will have ample opportunity to discuss them. I see no reason why this clause should now be postponed at all. The note does not form part of that clause: it is only an explanation which you can ignore you need not take it into account at all.

**Shri Mahavir Tyagi:** Now that the note stands cancelled there is no point of order, as the misunderstanding was due to the note.

**Mr. President:** As a matter of fact, no note which is contained in these papers forms part of the resolution before the House.

The question is:

“That Clause 14 be passed.”

**B. Pocker Sahib Bahadur:** Sir, I made a request to you on this matter. The question that I raised was as a point of order and it is your duty to give a ruling as to whether this motion is in order or not. I want a ruling from you on this point before you put the clause to vote.

**Mr. President:** I do not think any question of a point of order arises. The question has been put.

The motion was adopted.

**The Honourable Sardar Vallabhbhai Patel:** Sir, I seek your permission that Clause 15 do stand over until such time as Clauses 20 and 22 are considered, because it would be more appropriate to take it at that time. I therefore ask your permission that Clause 15 stand over.

**Mr. President:** Clause 15 shall stand over.

**The Honourable Sardar Vallabhbhai Patel:** Sir I move Clause 16.

“(1) The Governor shall appoint a person, being one qualified to be a judge of a High Court, to be Advocate-General for the Province to give advice to the Provincial Government upon legal matters.

(2) The Advocate-General shall retire from office upon the resignation of the Prime Minister, but may continue to carry on his duties until a new Advocate-General shall have been appointed.

(3) The Advocate-General shall receive such remuneration as the Governor may determine.”

(Messrs. P. Kakkan, M. Ananthasayanam Ayyangar, H. V. Pateskar K. Santhanam and Gupta Nath Singh did not move their amendments.)

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

“That Clause 16 be passed.”

The motion was adopted.

#### CLAUSE 17

**The Honourable Sardar Vallabhbhai Patel:** Sir, I beg to move Clause 17:

“All executive action of the Government of a Province shall be expressed to be taken in the name of the Governor.”

This is only a formal motion and I move it for the acceptance of the House.

**Sri M. Ananthasayanam Ayyangar:** Sir, I do not propose to move my amendment.

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

“That Clause 17 be passed.”

The motion was adopted.

#### CLAUSE 18

**The Honourable Sardar Vallabhbhai Patel:** Sir, I beg to move Clause 18:

“The Governor shall make rules for the more convenient transaction of the business of the Provincial Government and for the allocation of duties among Ministers.”

(Messrs. Kala Venkata Rao, M. Ananthasayanam Ayyangar and R. K. Sidhwa did not move their amendments.)

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

“That Clause 18 be passed.”

The motion was adopted.

The Assembly then adjourned till 3 p.m. on Friday, the 18th July 1947.