

Tuesday, 15th 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

Tuesday, the 15th July, 1947

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

PRESENTATION OF CREDENTIALS AND SIGNING OF THE REGISTER

The following Members presented their Credentials and signed the Register:

1. The Honourable Mr. Hussain Imam (Bihar: Muslim).
2. Mr. N. Madhava Rao (Eastern States Group-III).
3. Rao Raja Jayendra Singh Jue Dev (Central India States Group).
4. Pandit Thakur Das Bhargava (East Punjab).
5. Mr. Jasimuddin Ahmed (West Bengal: Muslim).

AMENDMENTS OF THE RULES

Mr. President: I shall now take up the amendments of the Rules.

RULE 2

Mr. K. M. Munshi (Bombay: General): Sir, I propose to move my amendments rule by rule. Perhaps that would be more convenient to the House. Sir, I move:

“That in clause (b) of Rule 2 the words ‘Sections or’ be deleted and also that clause (f) be deleted.”

As the House will see both these clauses refer to Sections. Rule 2, clause (b) says:

“‘Chairman’ means the person who for the time being presides over the Assembly or any of its Sections or Committees.”

There are to be no sections and therefore the word “Sections or” have to be deleted. Also clause (f) which refers to Sections should be deleted from the Rules.

Mr. President: The question is:

“That in clause (b) of Rule 2 the words ‘Sections or’ be deleted and also that clause (f) be deleted.”

The motion was adopted.

RULE 3

Mr. K. M. Munshi: Sir, I move:

“That in Rule 3 the words ‘or any Section thereof’ be deleted.”

Mr. President: The question is:

“That in Rule 3 the words ‘or any Section thereof’ be deleted.”

The motion was adopted.

RULE 4

Shri K. Santhanam (Madras: General): Sir, I have an amendment to Rule No. 4. I move:

“That the Proviso to Rule 4 be deleted.”

This is consequential to the abolition of the Indian Legislative Assembly and the proviso ceases to have any meaning. Therefore I move for its deletion.

Mr. K. M. Munshi: Sir, I accept the amendment moved by Mr. K. Santhanam.

Shri Sri Prakasa (U.P.: General): What happens to the Members who represent these constituencies (Delhi or Ajmer-Mewara) at the present moment in the Constituent Assembly?

Mr. K. M. Munshi: The present members will continue but in case there is a vacancy a provision is being made in the amendment that is going to be moved by Mr. K. Santhanam to Rule No. 5 Special provision has been made for it.

Mr. President: The question is:

“That the Proviso to Rule 4 be deleted.”

The motion was adopted.

RULE 5

Mr. K. M. Munshi: Sir, I move:

“That in sub-rule (2) of Rule 5, delete the words ‘or the appropriate authority in British Baluchistan’.”

“That for sub-rule (6) the following be substituted:

“(6) As soon as may be after the receipt of the request mentioned in sub-rule (2) the Speaker of the Provincial Legislative Assembly concerned—

- (a) shall appoint by suitable notification a person to be the Returning Officer for the election and may also in like manner appoint any person who may, subject to the control of the Returning Officer, perform all or any of the functions of the Returning officer at any such election, and
- (b) shall also appoint by suitable notification—
 - (i) a date, not later than fifteen days after the date of, notification for the nomination of candidates;
 - (ii) a further date, not later than the third day after the first-mentioned date, for the scrutiny of nominations ;
 - (iii) a further date, not later than two days after scrutiny, for withdrawal of his candidature by a candidate; and
 - (iv) a further date, not later than twenty one days from the date fixed for withdrawal on which a poll shall if necessary, be taken.’”

The reason for these amendments is that no provision was made for the appointment of a Returning Officer and it has been found that such a provision is necessary.

Mr. President: The question is:

“That in sub-rule (2) of Rule 3, delete the words ‘or the appropriate authority in British Baluchistan’.”

“That for sub-rule (6) the following be substituted:

(6) As soon as may be after the receipt of the request mentioned in sub-rule (2) the Speaker of the Provincial Legislative Assembly concerned—

- (a) shall appoint by suitable notification a person to be the Returning Officer for the election and may also in like manner appoint any person who may, subject to the control of the Returning Officer, perform all or any of the functions of the Returning Officer at any such election, and

(b) shall also appoint by suitable notification—

- (i) a date, not later than fifteen days after the date of notification, for the nomination of candidates ;
- (ii) a further date, not later than the third day after the first-mentioned date, for the scrutiny of nominations ;
- (iii) a further date, not later than two days after scrutiny, for withdrawal of his candidature by a candidate; and
- (iv) a further date, not later than twenty-one days from the date fixed for withdrawal, on which a poll shall, if necessary, be taken.”

The motion was adopted.

Shri K. Santhanam: Sir, I move:

“That in sub-rule (2) of Rule 5, after the words ‘as the case may be’ the words ‘the Advisory Councils of Delhi and Ajmer-Merwara’ be inserted.”

“That in sub-rule (5) of Rule 5, after the words ‘in any part of India’, the words ‘which is participating or entitled to participate in this Assembly’ be inserted”.

“That for sub-rule (11) of Rule 5, the following be substituted:

“The foregoing rules shall apply in relation to Delhi and Ajmer-Merwara subject to the following modifications, namely:

- (a) that for the ‘the Provincial Legislative Assembly’ there shall be substituted ‘the Delhi Advisory Council or the Ajmer-Merwara Advisory Council, as the case may be; and for the ‘the Speaker of the Provincial Legislative Assembly’ there shall be substituted ‘the Chairman of the Delhi or Ajmer-Merwara Advisory Council as the case may be’.
- (b) that instead of a section of the Provincial Legislature taking part in the election, the non-official members of the Delhi or the Ajmer-Merwara Advisory Council shall take part in it’.”

These are all consequential to the changes that have been made and I do not think any further explanation is needed.

Mr. K. M. Munshi: Sir, I accept the amendments moved by Mr. Santhanam. They carry out the idea that the representatives of Delhi and Ajmer-Merwara have to be elected by the respective Advisory Councils.

Mr. President: The question is:

“That in sub-rule (2) of Rule 5, after the words ‘as the case may be’ the words ‘the Advisory Councils of Delhi and Ajmer-Merwara’ be inserted.”

“That in sub-rule (5) of Rule 5, after the words ‘in any part of India’, the words ‘which is participating or entitled to participate in this Assembly’ be inserted”.

“That for sub-rule (11) of Rule 5, the following be substituted:

“The foregoing rules shall apply in relation to Delhi and Ajmer-Merwara subject to the following modifications, namely:

- (a) that for ‘the Provincial Legislative Assembly’ there shall be substituted ‘the Delhi Advisory Council or the Ajmer-Merwara Advisory Council as the case may be’; and for ‘the Speaker of the Provincial Legislative Assembly’ there shall be substituted ‘the Chairman of the Delhi or Ajmer-Merwara Advisory Council as the case may be’.
- (b) that instead of a section of the Provincial Legislature taking part in the election, the non-official members of the Delhi or the Ajmer-Merwara Advisory Council shall take part in it’.”

The motion was adopted.

Mr. K. M. Munshi: Sir, I move:

“That after sub-rule (6) of Rule 5 the following new sub-rule be inserted:

- ‘(6)A. The Speaker of the Provincial Legislative Assembly concerned shall, if a poll is taken, by suitable notification fix the hour at which the poll shall commence and the hour at which it shall close on the date fixed under sub-clause (iv) of clause (b) of sub-rule (6) and the place at which the poll shall be taken.’ ”

[Mr. K. M. Munshi]

“That the following be added at the end of sub-rule (9) of Rule 5:

‘where any such rules or regulations exist, it shall be competent for the Speaker of the Provincial Legislative Assembly concerned to make, with the previous approval of the President, such modifications therein as may be necessary for the purposes of this sub-rule.’ ”

This completes the mechanism for holding the election. In Rule 5 we have added a provision with regard to the Returning Officer. With a view to completing the whole mechanism of election it is necessary that the Speaker should be authorised to have a poll taken, if required. Also, there may be rules which may be required to be modified and it may not be possible to come to the Constituent Assembly. In order to complete the election, therefore, the Speaker may be authorized with the previous approval of the President, to modify the rules.

Mr. K. Chengalaraya Reddy (Mysore State): Sir, when the previous amendment was moved, I stood up to raise a question as to what was the provision made for filling up a vacancy, if it arose in an Indian State. I was told by an Honourable friend that the provision was incorporated in the Rules, and I then sat down. But now, an amendment has been moved laying down the procedure to fill up vacancy by by-election. On a cursory reading of the Rules I do not find that any provision has been made for filling up a vacancy; if it arose, in an Indian State. I therefore suggest that a suitable provision may be made in the Rules of Procedure.

Mr. K. M. Munshi: There is some misunderstanding. As regards elections with respect to Indian States, a Standing Order has been made by the President and they will be governed by the Standing Orders.

shall commence and the hour at which it shall close on the date fixed under sub-clause (iv) of clause (b) of sub-rule (6) and the place at

These relate to the Chief Commissioners provinces.

Mr. President: The question is:

“That after sub-rule (6) of Rule 5 the following new sub-rule be inserted:

‘(6A. The Speaker of the Provincial Legislative Assembly concerned shall, if a poll is taken, by suitable notification fix the hour at which the poll shall be taken.’ ”

“That the following be added at the end of sub-rule (9) of Rule 5:

“where any such rules or regulations exist, it shall be competent for the Speaker of the Provincial Legislative Assembly concerned to make with the previous approval of the President, such modifications therein as may be necessary for the purposes of this sub-rule.”

The motion was adopted.

RULE 10

Mr. K. M. Munshi: I come to rule No. 10, that is with regard to the convening of a meeting of the Sections. I move that the whole of the rule be deleted.

Shri Sri Prakasa: I sent notice of an amendment this morning for the insertion of a new rule after Rule 5.

Mr. President: I understand that this notice was received this morning.

Shri Sri Prakasa: I could not send it earlier. I sent it today at 10 o'clock.

Mr. President: Is it not too late?

Shri Sri Prakasa: I think the amendment is an important one because it fills in a lacuna in the existing rules. If you will permit me I shall move it.

Mr. K. M. Munshi: May I rise to a point of order? Our Rule 66 states that "No new rule shall be made nor shall any of these rules be amended or deleted except after a reference of the proposal so to make, amend, or delete the rule to the Steering Committee which shall report to the Assembly within two weeks of the receipt of the reference".

Shri Sri Prakasa: I am in your hands. I am only trying to fill in a lacuna. New elections have taken place. Rules 4 and 5 have been violated by an outside authority. All the new elections that have taken place in Bengal and the Punjab will otherwise be *ultra vires*.

Mr. President: Will you please wait till we have finished the other Rules? In the meantime, I shall consider it.

The question is:

"The rule 10 be deleted."

The motion was adopted.

RULE 11

Mr. K. M. Munshi: Sir, I move:

"That in Rule 11 for the words 'five Vice-Presidents' the words 'two Vice-Presidents' be substituted, and the following be inserted at the end of this rule.

'who shall be elected by the Assembly from amongst its members in such manner as the President may prescribe'."

Rule 11 provides for five Vice-Presidents, and this is interconnected with Rule 12 which says that the Chairman of each of the sections shall be an *ex-officio* Vice-President of the Assembly. As there are no sections now all this becomes unnecessary. In the result there will be two Vice-Presidents both of whom will be elected by the Assembly as a whole. Sir, I move.

The motion was adopted.

RULE 12

Mr. K. M. Munshi: Sir, I move that Rule 12 be deleted. That is consequential Sir, I move.

The motion was adopted.

RULE 13

Mr. K. M. Munshi: Sir, I move:

"That in Rule 13 for the words 'Rule 12(1)' the words 'Rule 11' be substituted."

Rule 13 the election of two Vice-Presidents is referred to as being under Rule 12 (1). Now Rule 12 having gone and the matter having been incorporated in Rule 11, Rule 13 should be amended accordingly. Sir, I move.

The motion was adopted.

RULE 14

Mr. K. M. Munshi: Sir, I move:

"That in sub-rule (2) of Rule 14 for the words 'an elected' the word 'a' be substituted, and that the words 'as a whole' be deleted."

[Mr. K. M. Munshi]

Rule 14 says that a Vice-President shall cease to hold office as such if he ceases to be a member of the Assembly. "Any vacancy in the office of an elected Vice-President of the Assembly shall be filled by election by the Assembly as a whole." In view of the changes that have already been made there is no reason to have the words "in elected" because both the Vice-Presidents are elected. Also there is no reason to keep the words "as a whole" because both the Vice-Presidents are going to be elected by the House as a whole. Sir, I move.

The motion was adopted.

RULE 17

Mr. K. M. Munshi: Sir, I move:

"That in Rule 17 'sub-rule (6)' be deleted, and in sub-rule (8) the words 'or a Joint Secretary' be deleted."

Sub-rule (6) provides for the Secretary of the section and it lays down that the Secretary of the section shall be a Joint Secretary of the Assembly. As there are no Joint Secretaries the sub-rule should be deleted. Further the words "Joint Secretary" appear in sub-rule (8) and these words should be deleted. Sir, I move.

The motion was adopted.

RULE 18

Mr. K. M. Munshi: Sir, I move:

"That in Rule 18 the words 'sections and the' be deleted."

The motion was adopted.

RULE 19

Mr. K. M. Munshi: Sir, I move:

"That in Rule 19, 'sub-rule 1(iii)' be deleted and in sub-rule 1(iv) the words 'or the sections' be deleted."

The motion was adopted.

RULE 23

Mr. K. M. Munshi: Sir, I move:

"That after Rule 23 the following be inserted as Rule 23A—

- '23A. (1) The presence of at least one-third of the whole number of members shall be necessary to constitute a meeting of the Assembly or any of its committees.
- (2) If the Chairman, on a count being demanded by a member at any time during a meeting, ascertains that one-third of the whole number of members are not present, he shall adjourn the Assembly or the committee, as the case may be, for fifteen minutes, and if on a fresh count being taken after that period it is found that there is still no quorum, he shall adjourn the Assembly or the committee as the case may be, till the next day on which it ordinary sits.' "

On the last occasion the question of quorum was not decided by the rules and it was left over to be incorporated in an additional rule. Sir, I Move.

Shri K. Santhanam: Sir, I am not moving the amendment that stands in my name.

Shri Sri Prakasa: Sir, may I know if these amendments of Mr. Munshi and the further amendments moved by Mr. Santhanam had been referred to the Steering Committee and if all this is in the nature of a note by the Steering Committee? Or are Mr. Munshi and Mr. Santhanam moving these off their own bat?

Mr. K. M. Munshi: These rules are not my Own; they are the report of the Steering Committee which I am placing before the House. They were initiated by the Steering Committee and I am moving them on behalf of the Committee.

Shri Sri Prakasa: Then what about Mr. Santhanam's amendments?

Mr. K. M. Munshi: These are amendments of the rules as proposed by the Steering Committee and so they are not covered by Rule 66; they are not new rules.

Shri Sri Prakasa: Sir, I do not know if you are satisfied with what Mr. Munshi says. I am not. I feel that you may just as well permit my amendment to be moved which is before you and which I think is very important.

Mr. President: I have asked the Honourable Member to wait till the end; the question of moving it does not arise at this stage.

Shri Sri Prakasa: An occasional reminder will be helpful. (*Laughter.*)

Shri Jaspal Roy Kapoor (U. P. General): Sir, I do not propose to move my amendment.

Mr. R. K. Sidhwa (C. P. & Berar: General): I am also not moving my amendment.

Mr. President: Then the amendment of Mr. Munshi will be put to the vote.

The question is:

"That after Rule 23 the following be inserted as Rule 23A—

- '23A. (1) The presence of at least one-third of the whole number of members shall be necessary to constitute a meeting of the Assembly or any of its committees.
- (2) If the Chairman, on a count being demanded by a member at any time during a meeting, ascertains that one-third of the whole number of members are not present, he shall adjourn the Assembly or the committee, as the case may be, for fifteen minutes, and if on a fresh count being taken after that period it is found that there is still no quorum, he shall adjourn the Assembly or the committee, as the case may be, till the next day on which it ordinarily sits."

The motion was adopted.

RULE 31

Mr. K. M. Munshi: I now come to Rule 31. I move:

"That sub-rule (3) of this Rule be deleted."

Rule 31 says:

"(1) A matter requiring the decision of the Assembly, shall be brought forward by means of a question put by the Chairman.

(2) In all matters requiring to be decided by the Assembly, the Chairman shall exercise a vote only in the case of an equality of votes.

(3) Any question relating to a matter referred to in paragraph 19(vii) of the Statement shall be decided as laid down therein."

Now, Sir, this sub-rule (3) has no efficacy. It has no meaning. I therefore move that it be deleted.

Mr. M. S. Aney (Deccan States): Will the Honourable Mover read out paragraph 19(vii) of the Statement.

Mr. K. M. Munshi: It reads:

“In the Union Constituent Assembly resolution varying the provisions of paragraph 15 above or raising any major communal issue shall require a majority of the representatives present and voting of each of the two major communities. The Chairman of the Assembly shall decide which, if any, resolutions raise major communal issues and shall, if so requested by a majority of the representatives of either of the major communities, consult the Federal Court before giving his decision.”

This is a double majority clause which, as I said, has lost its efficacy.

Mr. President: The question is:

“That sub-rule (3) of Rule 31 be deleted.”

The motion was adopted.

RULE 35

Mr. K. M. Munshi: Sir, I move:

“That the two provisos to Rule 35 be deleted.”

The rule and the provisos run as follows:

“In all matters relating to procedure or the conduct of business of the Assembly, the decision of the Chairman shall be final:

Provided that when a motion raises an issue which is claimed to be a major communal issue, the Chairman shall, if so requested by a majority of the representatives of either of the major communities, consult the Federal Court before giving his decision:

Provided further that no Section shall deal with matters which fall within the purview of the powers and functions of the Union Constituent Assembly or vary any decision of the Union Constituent Assembly taken upon the report of the Advisory Committee referred to in paragraph 20 of the Statement.”

For the reasons which I gave yesterday, these provisos become entirely useless. I move therefore that these two provisos may be deleted.

The motion was adopted.

RULE 36

Mr. K. M. Munshi: I now come to Rule 36. I move first that the word ‘exclusive’ in the first line be deleted. It says: ‘It shall be the exclusive function of the Advisory Committee referred to in paragraphs 19 and 20 of the Statement to initiate and consider proposals..... Now that that Statement is gone, this Statement becomes useless.

I move next that the words “Union Constituent” wherever they occur in this Rule and the words “shall be binding on the Sections and” be deleted.

Mr. President: You omit only the words “Union Constituent”?

Mr. K. M. Munshi: Yes, Sir, the word “Assembly” remains.

Mr. President: The question is:

“That in Rule 36,—

- (i) the word ‘exclusive’;
- (ii) the words ‘Union Constituent’, wherever they occur; and
- (iii) the words ‘shall be binding on the Sections and’
be deleted.

The motion was adopted.

RULE 41

Mr. K. M. Munshi: Sir, Rule 41 deals with the functions of the Steering Committee. Sub-rule (1) (c) runs thus: "act as a general liaison body between the Assembly and the Sections, between the Section *inter se*, between Committees *inter se*, and between the President and any part of the Assembly". I propose that in sub-rule (1) (c), the words "between the Assembly and the Sections, between the Section *inter se*" be deleted. These words are not longer necessary.

The motion was adopted.

RULE 42

Mr. K. M. Munshi: In sub-rule (1) (b) of this Rule, for the word 'five', substitute the word 'two'. As there are only two-Vice-Presidents now, this change has become necessary.

The Honourable Pandit Hirday Nath Kunzru (U. P.: General): May I know from Mr. Munshi how the amended Rule 41 (1) (c) reads?

Mr. K. M. Munshi: The Committee shall act as a general liaison body between Committees *inter se*, and between the President and any part of the Assembly.

The Honourable Pandit Hirday Nath Kunzru: Liaison between the Assembly and the Committees?

Mr. K. M. Munshi: No Between the committees.

Pandit Govind Malaviya: (U. P.: General): Will Mr. Munshi, Sir, explain what is meant by liaison between any part of the Assembly and the President? I can understand liaison between the committees.

Mr. K. M. Munshi: I am not responsible for that.

Mr. President: I am afraid the question of interpretation has been raised too late. When it becomes necessary to interpret it, we shall do so.

The Honourable Mr. Hussain Imam (Bihar: Muslim): If any absurdity becomes apparent it is within the competence of the House to make the necessary consequential change.

Mr. President: It does not arise out of the amendment now moved.

Mr. Munshi's amendment is to Rule 42.

In clause (b) of Sub-rule (1) substitute the word "two" or "five".

The motion was adopted.

RULE 45

Mr. K. M. Munshi : I now come to Rule 45. I move that in sub-rule (2), delete the words "one representing each Governor's Province" This is also consequential. Sub-rule (2) reads as follows:—this is about the House Committee:

"The Committee shall consist of eleven members, who shall be elected by the Assembly, one representing each Governor's Province in the manner to be prescribed by the President."

Now there are not eleven Governor's provinces, and the amendment would mean that there may be eleven members but not each representing a Governor's province. I move the amendment.

The motion was adopted.

RULE 46

Mr. K. M. Munshi: The next amendment is to Rule 46 which relates to other Committees. I move:

“That the words ‘or a Section according as the business of the Committee relates to the Assembly or the Section’ be deleted.”

This is also consequential.

The motion was adopted.

RULE 47

Mr. K. M. Munshi: I move that in Rule 47 the words beginning with “and the Secretary of any Section, etc.” to the end of the rule be deleted.

Mr. President: This is also consequential.

The motion was adopted.

RULE 48

Shri K. Santhanam: I move, Sir, that in Rule 48 for the word “shall” the word “may” be substituted. This is purely consequential to the amendment with regard to quorum which the House has adopted today. As the rule stands, it says:

“The motion by which a Committee is to be set up shall state the quorum necessary to constitute a meeting of the Committee.”

Because we had no rule regarding quorum, it was obligatory to state the quorum. Now we have got a rule which lays down the quorum as one-third. Therefore, this obligation is no more necessary. My amendment is that the motion by which a committee is to be set up may state the quorum, as quorum has already been provided for.

Shri Sri Prakasa: May I draw your attention, Sir, to Rule 66? Has this been referred to the Steering Committee?

Mr. President: I do not think that the Steering Committee has been consulted, but this amendment follows from the other amendment which you have accepted. It is only consequential.

Shri Sri Prakasa: I hope the same ruling will apply in my case.

Mr. President: The question is:

“That in Rule 48 for the word ‘shall’ the word ‘may’ be substituted”.

The motion was adopted.

RULE 49

Mr. K. M. Munshi. I move:

“That in Rule 49 the words ‘or to the Section concerned, as the case may be’ be omitted.”

The motion was adopted.

RULE 63

Mr. K. M. Munshi: I move that Rule 63 be deleted. This is with regard to the consideration of the draft constitutions by the Provincial Legislatures. I gave my reasons when I presented the report of the Order of Business Committee and I need not repeat them now.

Mr. President: Mr. Munshi's amendment is that Rule 63 be deleted. Does anyone wish to say anything about it?

The motion was adopted.

Shri Sri Prakasa: Before Mr. Munshi moves his amendment to Rule 67, I move that Rule 66 be deleted, even if it has not gone to the Steering Committee, as it is purely a consequential amendment. I hope you will permit this amendment to be moved. I think, Sir, that this Rule should go, and the Constituent Assembly should be able to exercise its inherent powers to change the rules instead of members having to go to the Steering Committee every time. I have a precedent for this in this afternoon's proceedings themselves inasmuch as the amendments to the original rules moved by Mr. Santhanam were in no way amendments to Mr. Munshi's amendments. If you will see, Sir, the amendments moved by Mr. Santhanam to Rules 4 and 5, you will find that they were absolutely new amendments and that they did not go to the Steering Committee. Since you permitted these amendments to be moved here, I hope you will permit me also to move this amendment.

Mr. President: Your amendment is out of order. The amendments to which reference has been made referred to amendments placed before the House and which had come here in due course after being passed by the Steering Committee. Therefore those amendments were perfectly in order. This Rule has never gone before the Steering Committee and therefore your amendment is altogether out of order.

RULE 67

Mr. K. M. Munshi: Coming to the last amendment with regard to Rule 67, I move:

"That the words 'the Sections and' in the first sentence and the whole of the second sentence be deleted."

This is also a consequential amendment.

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

Shri Jaspal Roy Kapoor: Mr. President, I am raising a point of order. Rule 67 is the rule on which Mr. Munshi has been relying so far. Rule 67, Sir, lays down that every proposal must go before the Steering Committee and the Steering Committee must consider it and must submit its report to the Assembly. Now, Sir, all these proposals which have so far been placed before us by Mr. Munshi have I understand been considered by the Steering Committee but in addition to that the Steering Committee must submit its report to the Assembly. So far no report of the Steering Committee has been placed before us. Now, Mr. Munshi is proposing an amendment to Rule 67. I would like to know what is the report of the Steering Committee. With regard to this proposal of Mr. Munshi, if there is no report of the Steering Committee before us, I think it is out of order for him to make any proposal to amend Rule 67.

Mr. President: As I understood from Mr. Munshi, all these amendments which he has been proposing were on behalf of the Steering Committee, and though they are put in the form of amendments, it is really the report of the Steering Committee.

The Honourable Pandit Hirday Nath Kunzru: Was the President informed that these were the amendments to the rules which had been proposed by the Steering Committee?

Mr. President: There was a meeting of the Steering Committee in which all these rules and amendments had been considered and they are coming from there.

Shri Jaspal Roy Kapoor: My submission is that there must be a report of the Steering Committee before us. On the agenda paper all that we have is that Mr. Munshi shall move the proposal as are contained in the Order Paper. There has been no report of the Steering Committee before us. The report of the Steering Committee must be presented in a proper form to the Honourable the President of the Assembly either by the President or by the Secretary of the Committee. Mr. Munshi is neither the President nor the Secretary of the Steering Committee.

The Honourable Sardar Vallabhbhai Patel (Bombay: General): On a point of order I would like to ask how this could be raised after the rules have been passed. It should have been asked at the initial stage.

Mr. President: I agree. The question was raised at an earlier stage and it was answered that the amendments had been considered by the Steering Committee. Probably the mistake has arisen because it is not so stated in the agenda that this is a report from the Steering Committee. Otherwise, so far as the substantial compliance with the rules is concerned that has been done.

Shri Jaspal Roy Kapoor: Then, as a matter of fact, is there any report of the Steering Committee?

Mr. President: It is not stated as a report but it is a report submitted by the Steering Committee, Mr. Munshi has been authorised by the Steering Committee to put these amendments before the House on behalf of the Steering Committee.

The Honourable Sardar Vallabhbhai Patel: The Chairman of the Steering Committee is the President of the Constituent Assembly and the reference may be oral.

Mr. K. M. Munshi: The position is that the President of the Constituent Assembly is the *ex-officio* Chairman of the Steering Committee. Naturally he cannot place the report. The *ex-officio* Secretary is not a member of this House and the Steering Committee has asked one of its members as a Reporteur to place its decisions before this House. These rules were the rules which emanated from the Steering Committee and which the Steering Committee authorised me to place before the House.

Mr. President: I have already ruled that the amendment is in order. Now I put the amendment which has been moved by Mr. Munshi to vote.

The question is:

“That in Rule 67 the words ‘the Sections and’ in the first sentence and the Whole of the second sentence be deleted.”

The amendment was adopted.

Mr. President: There was an amendment which Mr. Sri Prakasa wanted to move. That has not gone to the Steering Committee, but I understand that the amendment which he proposes to move rectifies

a lacuna in our rules. I therefore ask the permission of the House to let him move the amendment. If the House agrees, I would permit him to move it.

The Honourable Pandit Jawaharlal Nehru (United Provinces: General): May I suggest that he be asked to send it to the Steering Committee and it may be taken up later?

Mr. President: It is after all more or less a formal business. It rectifies a lacuna which exists in our rules which we have discovered. So it may not be necessary to go through the formality and send it to the Steering Committee, if the House permits it.

Diwan Chaman Lall (East Punjab: General): Are we bound by the rules we have made?

Mr. President: We are certainly bound by the rules.

Diwan Chaman Lall: There is no rule under which the President can ask the permission of the House. I want to know what is the proper procedure to amend the rules passed by the Steering Committee.

Mr. President: After hearing the amendment if the House still thinks that it should be put to the Steering Committee, then I will do so. Mr. Sri Prakasa, will you kindly read out the amendment?

Mr. M. S. Aney: Rule 66 seems to be very imperative and leaves no discretion to anybody. Unless some power under the rules is given to President to suspend the operation of any rule on account of emergency, I think the President cannot call upon this House to accept any amendment in order to infringe these rules.

Mr. President: I thought the House had power to dispense with its own rules when it liked and therefore I must not take upon myself to permit this amendment to be moved. As far as I can see there is no provision for allowing the House or the President to suspend any of the rules, but I take it that it is inherent in the House to suspend any of the rules for the time being and to permit any member to move anything which does not strictly fall within these rules.

Shri Jaspat Roy Kapoor: May I draw your attention to Rule 26 which says:

“Unless otherwise directed by the Chairman, notice of every motion accompanied by a copy of the motion shall be given at least three clear days before the day on which the motion is to be moved in the Assembly.....”

Mr. President: That only lays down the time for giving notice of any motion. That is why I said that if the House does not wish to take this up, I am not going to allow it. But if the House permits. I shall have no objection. Therefore, I put it to the House.

Will Shri Sri Prakasa read his amendment?

Shri Sri Prakasa: After Rule 5, insert the following new rule:

“Notwithstanding the provisions of Rules 4 and 5 above, the Governor-General of India may, in pursuance of the statement of His Britannic Majesty’s Government of 3rd June 1947, order fresh elections to the Constituent Assembly from the areas mentioned in paras 4 to 14 of that statement and thereupon the members already elected from the said areas whether or not they have taken their seats in the Assembly in the manner prescribed in Rule 3, shall be deemed to have vacated their seats and the members newly elected shall be deemed to have been duly elected as members of the Assembly. This rule shall have retrospective effect from June 3, 1947.”

[Shri Sri Prakasa]

I think, Sir, that this rule is self-explanatory. The fact is that the Viceroy acted in a manner which was contradictory to the Rules that the Constituent Assembly had framed for itself. Rules 4 and 5 definitely prescribe the manner in which seats will be vacated and filled. These rules were grossly violated during the last few months and new elections were held. Many members of this House were deemed to have vacated their seats without having resigned their membership. We have all acquiesced in that.

Now, Sir, in order to vindicate our own honour, I think it is imperative that we should pass a rule so that all that has happened may be sanctioned formally. If we do not pass this rule, I submit, Sir, most respectfully that the presence of the new members from Bengal and the Punjab cannot be allowed. I therefore think that it is essential that this rule should be passed. I hope the House will agree.

Mr. President: I would like to know whether the House would permit this amendment to be taken up. We are not now going into the merits. The question is whether it should be allowed to be discussed.

The Honourable Pandit Jawaharlal Nehru: I am not saying anything on merits. What I was going to say is this. Even if it is taken up, this is something which the Steering Committee must consider. This is a long drawn out Rule which, even if accepted on merits, has to be looked into by lawyers and others. The question is how it should be accepted. It cannot be taken up in this manner. Otherwise, instead of removing a difficulty we might be creating other difficulties. I submit the proper course is to send it to the Steering Committee.

Mr. President: I am putting it to the House.

The motion to permit the amendment being taken up was negatived.

Shri Sri Prakasa: Am I to take it that this amendment is lost?

Mr. President: It is not lost. It is not taken up. You can send it to the Steering Committee and it may come up in due course.

Shri Sri Prakasa: May I respectfully enquire what will be the position of the new members who have been elected and who have taken their seats? In the light of Rules 4 and 5, will their presence be allowed.

Mr. President: I allowed them to take their seats yesterday. They will continue.

The Honourable Pandit Jawaharlal Nehru: May I point out that the question that Shri Sri Prakasa has raised is an important question? The question is how to do it. The bringing up of an informal amendment to the Rules is an improper way. Possibly it will be open to the House to pass a resolution or if it is necessary to change the Rules we may change them. But it must be considered by the appropriate authority. My only submission is that it cannot be taken up in this casual way.

Shri Sri Prakasa: We have admitted members in a casual way.

Mr. President: We may now pass on to the next item.

Mr. H. V. Kamath (C.P. & Berar: General): I submit that in the light of the new rules that have been made, and the old rules that have been amended or deleted all the rules be re-numbered omitting all A's etc.

Mr. President: We shall do that. I think the House has no objection to the re-numbering of the Rules consequent on the amendments. I take it that this is agreed to.

Pandit Govind Malaviya: Sir, I think the right course will be, that the rules should all be correctly re-numbered, and then in a formal manner put before the House *en bloc* and adopted without any further discussion. That will regularise things.

Many Honourable Members: Why?

Mr. President: We shall now pass on to the next item.

Mr. Deshbandu Gupta (Delhi): Before the next item is taken up, Sir, may I know what has happened to the amendment of which notice had been given by me?

Mr. President: That shares the same fate as that of Mr. Sri Prakasa.

Mr. Deshbandhu Gupta: In view of the important nature of the amendment, may, I submit that it may be taken up now with the permission of the House.

Mr. President: I think there is no use of repeating that experiment. You had better leave it.

We shall now go on to the next item in the agenda. Sardar Vallabhbhai Patel will move the motion standing in his name.

Mr. Tajamul Husain (Bihar: Muslim): Before we proceed with the motion, I would like to know what happened to the resolution which I had sent about four days ago in connection with the motion about to be moved now?

Mr. President: I take it that you are referring to the dissolving of the Committee which has already completed its function and submitted its report. Is that the resolution you are referring to?

Mr. Tajamul Husain: That is the only resolution I have sent you.

Mr. President: I have ruled it out of order because the function of the Committee is already over and it has made its report.

Mr. Tajamul Husain: May I know if it is the custom of the House not to inform an Honourable Member who sends a resolution that it has been disallowed? I have had no information of this up till now.

Mr. President: I have ruled it is out of order.

Mr. Tajamul Husain: I accept your ruling. I am asking why I was not informed of it. Is it the practice, when an Honourable Member sends a resolution and you disallow it, that you do not inform the member concerned?

Mr. President: I shall take care in the future to inform members if I disallow any resolution.

REPORT ON THE PRINCIPLES OF A MODEL PROVINCIAL
CONSTITUTION

The Honourable Sardar Vallabhbhai Patel: Sir, I move that this Constituent Assembly do proceed to take into consideration the Report* on the principles of a model Provincial Constitution submitted by the Committee appointed in pursuance of the resolution of the Assembly of the 30th April, 1947.

*Appendix.

[The Honourable Sardar Vallabhbhai Patel]

This Committee has submitted its report which has been circulated amongst all the members of this House since about a fortnight and the report is in the possession of all the members. What I wish to point out in moving this motion is that report is not the final draft of the provincial constitution. According to the instructions given to the Committee, it has settled certain principles of the provincial constitution, and therefore, this House need not go into the verbal details or into the exact legal form or constitutional form of these clauses that have been submitted in the memorandum. If the various clauses in the report are, after consideration, adopted, or improved upon, then, it will be the function of the draftsmen or the lawyers who will be entrusted with the work of drafting the constitution to put them in the proper form. Therefore, the House need not waste its time on going into a consideration of the language of the various clauses.

It should also be remembered that this report contains roughly about 85 per cent. of the draft or 85 per cent. of the principles of the provincial constitution that has to be framed. Because, you will remember that this House has appointed an Advisory Committee which has to submit its report after that Reports of the Minorities Committee and the Tribal and Excluded and Partially Excluded Areas Committee are received. These Reports have not yet been received. When they are received, in due course, the Advisory Committee will meet and consider these Reports when the question of protection of minorities rights and interests will be taken into account. It has been agreed that this Advisory Committee should meet during the course of this month and submit its report before this House disperses or meets again. Therefore, that report will come at a later stage.

Now, in dealing with the memorandum that is before you. I shall briefly touch upon the salient features of the draft. The first question we had naturally to consider was whether the provincial constitution shall be of a unitary type or shall be of a federal type, and as there was a little difference of opinion on this question, the Committee thought it proper to have a joint session of the Provincial Constitution Committee and the Union Constitution Committee. Both these Committees met and they came to the conclusion that it would suit the conditions of this country better to adopt the parliamentary system of constitution, the British type of constitution with which we are familiar. The two Committees have agreed and the Provincial Constitution Committee has accordingly suggested that this constitution shall be a parliamentary type of Cabinet.

Some misunderstanding may arise on some of the items mentioned in Clause 9. Clause 9 provides four items under the note. The first one says, the prevention of any grave menace to the peace and tranquillity of Province or any part thereof. It means that the Governor is probably given powers in the case of a grave menace to the peace and tranquillity in the province, which, I may say, is not exactly the intention of the Committee. The Committee, in setting this question, intended to convey that the Governor shall have only the authority to report to the Union President about the grave situation arising in the province which would involve a grave menace to the peace of the province. It was not their intention that this power or authority, as to be exercised by the Governor which may perhaps bring a conflict between the Ministry and the Governor. The Governor having no control over the services, the authority of administration entirely vests in the Ministry and therefore, although there was considerable difference of opinion on

this question on account of the prevailing conditions in the country,—some thought that it would be advisable under the present peculiar unsettled conditions in the country to give some limited powers to the Governor—eventually the Committee came to the conclusion that it would not be workable, that it would create deadlocks and therefore, the proper course would be to limit his powers to the extent of authorising him to report to the President of the Union. What steps, or, what authority the President of the Union exercise would be a matter for the Union Powers Committee to provide in the Union Constitution. But, so far as the provincial constitution is concerned, it was agreed that this limited power of reporting only should be given to the Governor.

Then, you will see the second item in Clause 9, the summoning and dissolving of the Provincial Legislature (Clause 20 of this Part). This is a normal power which is given in every constitution to a Governor and therefore there is nothing special about it.

The third item provides for the superintendence, direction and control of elections. In this matter, I think the Fundamental Rights Committee made a recommendation that in order to ensure fair elections, there should be appointed a Commission by the President of the Union Constitution, so that it should be above party influences and fair elections in all provinces can be ensured. This, I think, was adopted by this House when the Fundamental Rights were adopted and therefore this clause will have to be brought into line with the former resolution adopted by this House.

There is then the fourth item the appointment of the Chairman and members of the Provincial Public Service Commission and of the Provincial Auditor General. In this matter also, the appointment of the Chairman and the members of the Provincial Service Commission is generally made on the recommendation of the Cabinet or Ministry.

Therefore, when we analyse Clause 9, practically the only powers left to the Provincial Governor is the power to report to the Union President when a grave emergency arises threatening menace to the peace and tranquillity of the province and the summoning and dissolving of the Provincial Legislature.

When we have dealt with Clause 9, we then come to the recommendations of the Committee which deal with the constitution of the legislature whether there should be two Houses or one House. The Committee generally agreed that there should be only one House of Legislature. But it was also agreed that if any of the Provinces wanted a bicameral legislature, it should be open to the province to set up, such a legislature, but that the constitution of the Upper House would be, according to the opinion of the Committee, on the Irish model, where a certain percentage is to be elected on functional representation and a certain percentage to be nominated and provision has to be made for election. Now, the recommendation of the Committee regarding the Second House is a departure from the existing Act in so far as half of the members are to be elected by functional representation. There will be representation in the Lower House for special interests such as women, labour, commerce, industry, etc. This appears to be a reasonable provision and is in accordance with the Irish model.

The Committee have given special attention to the appointment of Judges of the High Court. This is considered to be very important by the Committee and as the judiciary should be above suspicion and should be above party influences, it was agreed that the appointment of High

[The Honourable Sardar Vallabhbhai Patel]

Court Judges should be made by the President of the Union in consultation with the Chief Justice of the Supreme Court, the Chief Justice of the Provincial High Court and the Governor with the advice of the Ministry of the provinces concerned. So there are many checks provided to ensure fair appointments to the High Court. These are the special features. The principle settled by the Committee is contained in the memorandum and for the rest of the Constitution it was agreed that drafting should be made on the adaptation of the present 1935 Act, by making suitable alterations. Therefore, I move that this report of the Committee be taken into consideration and if the House agrees, the Report may be taken clause by clause.

Maulana Hasrat Mohani (United Provinces: Muslim): *[Sir, my Honourable friend Sardar Patel has presented the Report before you and with due respect to him I raise an objection to it. It is that till the Report on Union Constitution is presented before the House, consideration of this Report seems quite inappropriate. The reason is not this, as Patel Sahib has himself said, that it is not final and the mistakes, if any, could be rectified later on. If only verbal changes were intended I would never have raised this point. I want to tell you, and through you, my nationalist and national-socialist friends, who are present here, that my objection is a vital and far-reaching one. If you lightly pass over this objection, then I am sure you will have to repent this action of yours and regret it some day.

Looking around, I find that except Nationalist members no one else is present here. There was one Communist member from Bengal, but somehow he has been ousted. From amongst the Forward Blockists, Sarat Chandra Bose has resigned from the membership. Mr. Tripathi of U.P. and one Forward Blockist of C.P., though they have not designed their seats, for some unknown reasons they are not present in the House. I feel it my duty to place the view-point of such of my friends before you.]*

The Honourable Sardar Vallabhbhai Patel: On a point of order. The debate is going on a wrong track and I do not understand what has the question of whether the Constitution shall be a Republican Constitution or not, to do with the Provincial Constitution and whether, there should be a Dominion Constitution also has nothing to do with it because we are today setting the principles of a Provincial Constitution and when the question as to whether there should be a Dominion Constitution or Republican Constitution comes. Maulana Hasrat Mohani can move any amendment or say anything. To-day we deal with only the Provincial Constitution draft which can fit in with an Independent India which has nothing to do with Dominion Status and which can fit in with the Republican Constitution according to the Resolution which has been passed by the Constituent Assembly. Therefore, he may not be allowed to cover a wide range which has nothing to do with our present motion.

Maulana Hasrat Mohani: *[Had there been some ulterior motives behind it, I would not have put it up in this way. For example, if I had done all this with communal feelings and dilatory tactics. I would have asked you to withhold this Report until the report on Minorities is put up before us. But in fact, the question is simply this that you

*[English translation of Hindustani Speech begins.

*[English translation of Hindustani Speech ends.

*[English translation of Hindustani speech begins.

should proceed on some principles and do not put up the Provincial Constitution before the Union Constitution is put before the House.

No doubt, Pandit Nehru has moved the Objectives Resolution of the Republic, but it has not been made clear as yet whether the proposed Republic would be of unitary type or of Federal type. Again it has not been as yet decided in case it is a Federal Republic, whether the Government would be centrifugal or centripetal.

If you do not accede to my request, my party will line up with the Leftist groups and with the aid of the Communists and Forward Blockists it will compel you to accede to our demand. Let me explain this also in this way, that, unless there is some change in the Union Constitution and the Constitution of the Union is not made satisfactorily, till then the condition of the Provinces will remain unchanged and, it will not go beyond provincial autonomy, and we will, as an Indian saying has it; "we would always remain shoe-makers that we were".

In the Report which Sardar Saheb has just now put up, he has very intelligently stated in it that they wanted to appoint Governors. You will see that with this word only, the whole constitution of the Union is defaced and distorted.

Even if we accept the suggestion of Sardar Patel, the clear meaning would be simply this that the Provinces would get Provincial autonomy only, and if this is so, I will say that all the years of your sacrifices, labours and the 'Quit India' Resolution, one and all will be rendered useless.]*

Mr. President: I think Maulana Hasrat Mohani's amendment is in order. It is open to the House to throw it out.

Maulana Hasrat Mohani: *[All the time you were telling us that we would establish an Independent Republic and parties shall be formed not on the basis of religion, but on socialistic principles.]*

Mr. President: *[This is not the question. For the present, the simple question is whether the Report should be considered or not.]*

Maulana Hasrat Mohani: *[What I mean is that this you want to pass the Provincial Constitution by the back door.]*

Mr. President: *[You have already stated the reasons. You forgot that this is not occasion to discuss your Republic and all sorts of questions.

So far this amendment is concerned, you have already stated, the grounds on which you want to move it; and I feel that other questions should not be discussed.]*

Maulana Hasrat Mohani: *[Sir, I will conclude my statement within a short time. All the Forward Block and Communist members are absent, therefore, on their behalf, I will protect their rights, and if by your voting strength in this House, you pass anything as you like, then I will adopt other methods to protect their rights. Once again I submit that all your actions should be based on principles and that you should protect the rights of all.]*

]* English translation of Hindustani Speech ends.

[] English translation of Hindustani speech.

An Honourable Member: on a point of order, Sir. Is the Honourable Member in order in calling this a packed House? Is it parliamentary? He may be asked to withdraw the expression.

Maulana Hasrat Mohani: I did not use any unparliamentary expression. I only said that somehow or other people here are all nationalists and as such were deaf. I did not mean and discourtesy to the House.

The Honourable Pandit Jawaharlal Nehru: *[Mr. President, if the Report of the Union Constitution Committee had been under consideration at this time, I would be standing here in a special capacity. But I rise now to remove the misunderstandings that have arisen in the minds of some of the members. It may be that I may not wholly succeed in my object. It is quite possible that I may fail to convince Maulana Hasrat Mohani who is rather a deep person and claims to be at once the representative and spokesman of both the Communists and Forward Blockists. It is quite obvious that if my fear comes true he would suffer from considerable perplexity. But what I intend saying is nothing very incomprehensible and technical. It is quite correct to say that we would be acting improperly if we took up the consideration of the Provincial Constitution without keeping in view the ideals we seek to realise and the goal we seek to reach. We have, it is true, taken up the consideration of the Provincial Constitution, first.

Six months ago this House passed a Resolution which placed before it the plan and the ideals. These were approved. When Once the outline of anything has been drawn, the order in which the several problems involved therein are to be taken in hand had to be decided. In this case it so happened that the question of the Provincial Constitution arose earlier and the Report of the Provincial Constitution Committee also was ready earlier. Consequently, members got sufficient time to study this Report. The other Report, however, has been sent to the members only six or seven days ago. Consequently, keeping in view the fact that the members would not have sufficient time to study it, it was considered proper for their convenience not to submit that Report to the House for the time being, but to present the Report of the Provincial Constitution Committee which had been already sufficiently studied. Honourable Members have all received the Report of the Union Constitution Committee. If the President permits, I am ready to present it to the House immediately. The only difficulty in doing so is that the members may complain that they had no time to study it sufficiently, and that even if time be given for studying it, it would mean the waste of two or three days in doing so now. It was in view of this that it was considered proper to present the report which was ready and had been thoroughly studied. The other report will also be presented to the House just as this one has been. All of you should know that there is no intention of concealing anything or acting in an underhand manner in following this procedure.

In the present report the term 'Governor' occurs. This has completely upset the Maulana, I admit that the term 'Governor' has come down to us from the previous regime and that our associations with it are not very happy. But at present we are not concerned with the question of terminology. We do not know whether our Constitution would be in the English or any other language. So far as the term itself is concerned, you are all aware of there being Governors in America as also of the powers and authority they wield. I, therefore, submit that this does not violate in the least the ideas and the principles we have in view. It is my submission that there is no question of

*[English translation of Hindustani Speech begins.]

principle involved in it. The only question is of the convenient working of this House. If you and Sardar Patel so desire, I am prepared to present the Report of the Union Constitution Committee to the House.]*

Mr. Mohd. Tahir (Bihar: Muslim): Mr. President, Sir, I rise to support the amendment moved by Maulana Hasrat Mohani, firstly on the basis of a logical formula, *viz.*, what is true of the whole is true of the part. Sir, up till now we do not know as to what form of constitution this House will decide on regarding the Union of India. Certainly, the provinces are parts of India and unless we know the constitution of the Indian Union, it would not be fair to consider the principles of the provincial constitution. Just now, the Honourable Pandit Jawaharlal Nehru, Sir, has said that the constitution of the Indian Union is also ready and every member has got a copy of it. But, Sir, I would submit that having the copy of the constitution with the members is one thing and that taking of decisions by this House is another. Besides this, Sir, the Honourable Pandit Jawaharlal Nehru has just now said that he even prepared now to put the principles of the Indian Union Constitution before the House, and that it was by chance that the principles of the provincial constitution have been placed before the House beforehand. This clearly indicates that he also realises that the consideration of the constitution of the Indian Union should be taken up first.

My second point, Sir, would be that we do not know anything about the Report of the Minorities Committee, the Tribal Area Committee, etc., and the recommendations of those committees are to be incorporated in the constitution. Unless those reports are received it would not be fair to take up the consideration of the provincial constitution.

With these words, Sir, I support the amendment moved by Maulana Hasrat Mohani.

Shri Balkrishna Sharma (United Provinces: General): Mr. President, Sir, I rise to oppose the amendment which has been moved by Maulana Hasrat Mohani. When a minute before he was trying to act as a 'Khudai Fausdar', I was reminded of his very famous saying that he is either a Communist or a Communalist. (Some Honourable Members: "Both"). Now, he has become both a communist and a communalist and thereby he has tried to bridge the gulf between Karl Marx and Jesus Christ. The Maulana is a very great man. We have allooked upon him with reverence and respect all our life for his integrity of purpose and honesty, but I have always felt that he is one of those men who have always refused to work in a team. He is a man who is a solitary figure ploughing his lonely furrow. Even in the Muslim League which he joined after a great deal of confabulation, the Maulana, even though he was included in the High Command, remained a solitary figure. Now the amendment which he has moved is a very funny amendment, funny for the very simple reason that it really makes very little difference whether we consider the Union Constitution first or the provincial constitution first, because we have already got our objectives before us by a resolution of this House and anything that is not in consonance with that objective any member of the House is at perfect liberty to point out either in the model constitution for the provinces or in the Union Constitution, and therefore there is very little difference whether we consider the provincial constitution first or the Union Constitution first. The Maulana really raised a fundamental

] *English translation of Hindustani Speech ends.

[Shri Balkrishna Sharma]

question as to whether we should have the provincial constitution in nature of merely giving provincial autonomy to provinces or a republican constitution. If the Maulana thinks that the House will fall in line with him, he can certainly bring forward amendments to the provincial constitution, deleting the words which he does not like, making the Governor the President, if he so likes, and giving all sorts and manner of powers that he wants to give to the provincial legislature. If his amendments are not accepted by this House, naturally it will not help him to bring in the Union Constitution for consideration first. Where is the difference, I fail to see. Let it be clearly understood that we have made up our minds not to follow any of the constitutions in a slavish way, neither the American Constitution, nor the British model, nor any other model. We are going to evolve a constitution according to our needs and we shall see to it that we do not fall a victim either to this or to that pattern.

The Maulana has talked blibly about the U.S.S.R. Perhaps the Maulana forgets the very great difference between the U.S.S.R. and this unfortunate land where the Maulana is trying to fly at my throat and I have been trying to fly at his throat. We have got to take into consideration the situation in which we are placed. I think that, if our country wants to evolve a constitution which is mid-way between federation and a unitary form of government, we must be at perfect liberty to do so. In a country like ours which is always inventing all sorts and manners of divisions—this fissiparous tendency is a historical tendency—I think we must be very careful that we do not give so much power to the provinces as would lead to further division of the country.

It does not make the slightest difference whether we consider the provincial constitution first or the Union Constitution first. If the Maulana thinks that the House will agree with him in making the Provincial Constitution a model republican constitution, he is at perfect liberty to place his views before the House, but if he tries to monkey with it, he will succeed in doing so.

Sir, I strongly oppose the amendment which has been placed before the House by the Maulana.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, I beg to support the original motion, namely, that the Provincial Constitution be now taken into consideration. The amendment really is to the effect that the Provincial Constitution should not be taken up before the Report on the Union Constitution is considered. I submit, however, that the Provincial Constitution and the Union Constitution are two different things. It does not matter which constitution is taken first. If there are defects, if there are points of difference, if there are points on which any Member feels any objection, it will be open to him to raise the same and move the necessary amendments in the House. As has already been pointed out the Union Constitution proposals are already circulated and so we know what the Union Constitution proposals are likely to be.

The House therefore has a complete picture of what the Union and the Provincial Constitution would be like. I submit that on a matter like this we should not take the time of the House any further and the Question as to which constitution is taken up first is quite immaterial. With these few words, I support the original motion.

Pandit Govind Malaviya : Sir, I move closure of this debate.

Mr. President: Closure has been moved. The question is:

“That the question be now put.”

The motion was adopted.

Mr. President: The Mover of the resolution will reply to the debate.

The Honourable Sardar Vallabhbhai Patel: The amendment to the motion moved by Maulana Hasrat Mohani is that this motion should be taken up after the consideration of the Union Constitution Committee Report. The Maulana has perhaps seen the Union Constitution report as well as the Provincial, Constitution report, because he has been closely following what is going on in this Assembly and he has seen the objectives resolution of this Constitution that has been passed in the initial stage. Now I ask the Maulana whether this draft motion which I have moved contravenes the fundamentals in any manner of that objective. If it does not contravene in any way the original resolution that has been passed by this House, I do not see how he could have any doubts whether this constitution shall be a Republican Constitution or a *Shariat* Constitution or a Democratic Constitution. The real point is whether it is better to stand on the legs or on the head and we prefer to stand on the legs. We start with the provinces and we will come to the top, but some people occasionally try acrobatic feats and it is open to them to do so. The Maulana says that the Mover has done some sort of a trick by cleverly moving this resolution. I do not understand what trick I have done nor do I understand where the trick lies. The simple question is whether the draft which has been moved by me should be considered or not. He does not show by any argument that this motion should not be taken today. He suspects that there must be something in the Union Constitution and if he finds anything in the Union Constitution Report, when the report is taken, he will have ample time and opportunity to make any suggestions or alteration or modifications. There is nothing in this motion which gives room for suspicion or doubt and a simple motion like this should not be used for the purpose of taking any more time of this House. As Mr. Naziruddin Ahmad made it quite plain it will lead to an unnecessary waste of time of the House. The two are separate. One does not encroach upon the province of the other and therefore, they can conveniently be taken according to the order in which the order of the business is settled and the motion therefore before the House should be adopted without any division.

Mr. President: The Motion is:

“That the Constituent Assembly do proceed to take into consideration the Report on the principles of a model Provincial Constitution submitted by the Committee appointed in pursuance of the resolution of the Assembly of the 30th April 1947.”

To this an amendment has been moved:

“That the Report on the principles of a model Provincial Constitution be not taken into consideration before the Report on the principles of the Union Constitution.”

I put the amendment to vote.

The amendment was negatived.

Mr. President: The amendment is lost. I will put the original proposition to vote.

[Mr. President]

The question is:

“That the Constituent Assembly do proceed to take into consideration the Report on the principles of a model Provincial Constitution submitted by the Committee appointed in pursuance of the resolution of the Assembly of the 30th April 1947.”

The motion was adopted.

Chapter I

CLAUSE—1

Mr. President: We shall proceed to take the report clause by clause.

The Honourable Sardar Vallabhbhai Patel: Now with your permission, Sir, I move the first clause of the report—Chapter I—the Provincial Executive,

“*Governor*—1. For each Province there shall be a Governor to be elected directly by the people on the basis of adult suffrage.

(NOTE.—The Committee were of the opinion that the election of the Governor should, as far as possible, synchronise with the general election to the Provincial Legislative Assembly. This may, be difficult to provide by statute, because the Legislative Assembly may be dissolved in the middle of its term.)”

Now in this clause two important points are involved. The first thing is that for each province there shall be a Governor. That principle is an important one. The other important principle is that he shall be elected by adult franchise. Now in the Provincial Constitution you may have seen that very limited powers are given to the Governor and yet he has to be elected by a process which is very cumbersome and therefore the question may naturally arise that if the Governor has got limited powers, why do we go through the process of election which involves so much difficulty because an election in a province by the process of adult franchise is a very difficult job? Yet it is considered necessary because of the dignity of the office which a popular Governor will hold and naturally a Governor who has been elected by adult franchise of the whole province will exert considerable influence on the popular ministry as well as on the province as a whole. His dignity and status also demands that he should have the unanimous and general support of all the sections of the people in the country. Therefore, two principles are involved in this motion. One is the appointment of a Governor considered necessary in all the provinces according to the Model Provincial Constitution Report and the other is adult franchise and therefore I move.

Mr. President: I have received notice of a number of amendments to this clause. Many of them are printed and have been circulated, but I am getting amendments even now. I do not propose to take the amendments which I am getting now.

An Honourable Member: With your permission, Sir may I ask a question? Sardar Vallabhbhai Patel referred in the course of his speech to the fact that a joint meeting of the Provincial Constitution Committee and the Union Constitution Committee was held and that as a result of the deliberations of that Committee certain changes are to be made. May I know whether this clause was also considered and is it a fact that that Committee was of opinion that the election of Governor should not be held directly by adult franchise but he should be elected by the Provincial Legislature in accordance with the principle of proportional representation by a single transferable vote?

Mr. President: That is a question which the Mover may answer if he wishes.

Shri T. A. Ramalingam Chettiyar (Madras: General): I want one point to be made clear. That is whether this model constitution which has been framed for the provinces is the one which the Provinces will have to adopt necessarily or whether the Provinces are free to adopt them with such changes as they would like. This is a matter on which I would like to have elucidation.

Mr. President: All these questions will be replied to by the Mover if he wishes to answer them.

Dr. P. S. Deshmukh (C. P. & Berar: General): Sir, I would like to say a word about the amendments which have been received by you now. I would like to point out that although we were told to send the amendments early, the substantial motion has only just been made and it is only after a motion has been made that members are entitled to send any amendments. Therefore, I would request you, Sir, that these amendments which have been sent to you now and would be sent to you up to 6 o'clock today should be admitted and considered. It would be somewhat unfair not to admit them.

Mr. President: Do I understand, Dr. Deshmukh, that we should adjourn the House for allowing members to give notice of amendments which would be taken up later?

Dr. P. S. Deshmukh: No, Sir, I am suggesting that we should go on with the amendments already printed, but if there are any amendments which are sent in during the day they might also be considered. The very first clause has numerous amendments and it will take a long time to consider them; so no time will be lost in admitting the fresh ones.

Mr. President: If there are any amendments which you have given notice of and which, although not printed, members have had occasion to consider, then I will not stand in the way, but I will not admit amendments put before the House without proper notice, and giving opportunity to members to consider them.

Shri Mahavir Tyagi (U.P.: General): On a point of order, Sir.

Mr. President: The point or order arises on what?

Shri Mahavir Tyagi: I want to put a question to you with regard to the interpretation of the rules. Now, Sir, there is a rule that notice of amendments has to be sent one clear day in advance of the date on which the motion is made. I want to know if by the word "motion" the whole report is meant or each clause is a motion in itself. As far as I know, in our provincial legislature motion means a question put to the House or discussed before the House. Each question is a motion in itself. So, Sir, if I choose to send an amendment to, say, Clause 21, of this Report which will I expect come up day after tomorrow and give notice of an amendment today, I think, Sir, that amendment will be in order because there will be one clear day's notice.

Mr. President: Rule 32 lays down:

"Except as permitted by the Chairman, notice of any amendment to a motion must be given at least one clear day before the motion is to be moved in the Assembly."

[Mr. President]

The motion which has been moved was circulated and given notice of, I think, several days ago and members have had ample time to give 24 hours' notice of amendments. Therefore, I say, I cannot take up any amendment of which notice is given just now.

Shri Mahavir Tyagi: Sir, I was asking whether the moving of Clause 21 three days afterwards will be a motion in itself or not. The House will be in possession of that motion and be discussing it after three days. That being so, I submit I am entitled to bring in an amendment now because it will be more than one clear day in advance.

Mr. President: As I have said, if I get notice of an amendment in time for circulation to the members so that they may have an opportunity to consider it before coming to the House, I may accept it; but I cannot accept an amendment which cannot be printed and circulated to the members beforehand. If, however, notice is given now of an amendment to a motion which will come three days later, I do not mind it.

Shri Mahavir Tyagi: Thank you, Sir, my point is achieved.

Mr. President: We shall take up the amendments.

Mr. Naziruddin Ahmad: Sir, I submit that copies of the amendments were received by us only this morning. The matters dealt with are of an extremely difficult and abstruse nature and we have had no sufficient time to consider the amendments. I submit, therefore, that we may please be given at least twenty four hours' time to go through the amendments and then get ready to say yes or no or offer observations. That is the only thing I ask for.

Mr. President: I understand these amendments were circulated last night?

Mr. Naziruddin Ahmad: But we have received them only this morning. Some of us, I understand, got them today oncoming to the House.

Mr. President: I allowed members time up to yesterday evening to send in the amendments, and it has taken time to get them printed and circulated to the members. Some of them have received the copies, rather late. If members think they have not had enough time to consider the amendments, we may put off their consideration. But we have about 40 minutes more, and I suggest that we may take up their consideration now. We may not be able to take up more than one or two amendments, and if there is any difficulty we shall consider postponing them.

Nawab Muhammad Ismail Khan (United Provinces: Muslim): These amendments were laid on the table only this afternoon and we have had no time to consider the bill in the light of these amendments and I think it is only right that the members should get an opportunity to study the bill in the light of the amendments and thereafter the amendments may be taken one by one.

Mr. President: I was under the impression that the amendments were circulated last night.

Nawab Muhammad Ismail Khan: We received this book only this afternoon.

Mr. K. M. Munshi: But most members received it last night.

Mr. President: It seems there have been some delays in circulating the amendments because the addresses of some members were not

known to the office. It seems some members have not had these amendments until late this afternoon. I am entirely in the hands of the House as to whether we should consider the amendments now.

(After a pause.)

I now call upon Maulana Hasrat Mohani to move his amendment.

B. Pocker Sahib Bahadur (Madras: Muslim): I only want to remind you of the request I made yesterday, that arrangements should be made to render the speeches into English as a large number of members are not able to follow the speeches in languages other than English. Therefore, Sir, in view of the fact that Maulana is going to speak in Urdu, I would request that arrangements may be made to give us a rendering into English of the valuable speech which Mr. Maulana is going to make.

Maulana Hasrat Mohani: Sir, I move my amendment to this Clause No. 1. I think I will have some difficulty in expressing myself in a foreign tongue but to accommodate my friend from Madras, I shall try my best to express myself as best as I can. I move:

“That in Clause 1, for the words ‘a Governor’ the words ‘a President’ shall be substituted.”

By this I intend to say that we have got an inherent right of all the members of all these constituent provinces to demand a Provincial Republic for every Province. What we have intended and what we thought and what we were expecting to get, we wanted and we thought that we will get a Union of Indian Republics. My friend Mr. Tripathi had moved an amendment in the last session of this Assembly that he wanted to introduce the word ‘Socialist’. It did not have the support of the House. We will see to it afterwards. If we have got a Federal Republic, it does not matter whether you agree to make it a Socialist Republic or not. In the first instance, you may have a Nationalist Constitution and majority of Nationalist members but I am sure that the tendency of the World is to become, everyone of us is becoming now, socialist minded and I think that the time is not far off when, as we expect, we will be able to form a solid group of leftists and I think that by the latest, in the next election. I hope that we will be able to capture the whole of the organization. If you now agree to make every province a Republic, I do not care whether you agree to make it socialistic or not. We will make it a socialist republic. But one thing I must say, you cannot shelve this question. You cannot say “We want only a Republic in the Centre. We will not allow any of these Provinces to become a Republic”, and as I said, this is a trick when you say that in each Province there shall be a Governor. I say that it must be a President. If you accept the word ‘President’, then it means that you agree to make every Province a Republic. If you refuse to accept the word ‘President’, then it means that you are determined to retain those Provinces as mere autonomous Provinces. You grant only Provincial autonomy and nothing else. If that is your intention, I most strongly protest against this sort of treatment which if I am not using any strong words, I shall say, will be something like staging a farce on the people of all the Provinces, especially on my Province, the United Provinces. Here my friend Pandit Nehru says “you can introduce afterwards any amendment you like to the Union Constitution”. I say I introduce this amendment here and now, and ask you to make this word ‘Governor’ ‘President’, so that you may not be able to refuse to reopen the whole thing on the occasion of my moving an amendment to the Union Constitution. Then the question of the Union Constitution

[Maulana Hasrat Mohani]

will anyhow come in and this difficulty will crop up. My friend Sardar Patel also said there is no difference whether we call Governor or President. There is a great difference. Once you disallow my amendment you will say 'No, we will have only Governor'. That means that you want to give us only Provincial autonomy. You do not want many of the Provinces to go even a single step further. I have read very carefully your Union Report. In this Union Report, page 12, Clause 9 says:

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

To this Clause 9, a note is added which says:

"In this respect the position of the provincial units is rather different. These have no executive power in respect of Federal subjects save as given by Federal Law."

In respect of the Indian States you say something. But you say the position of the Provincial units is different. They have no residuary power in respect of special subjects. You fix only the provincial subjects. And you ask us to accept this clause. We will not. Of course, you have got a majority. You can pass anything you like. But I ask in the name of justice and fairplay "What right have you got to deprive the provinces of India from aspiring to become republics of the Union of Federal Republics, and not only Federal Republics but Socialist Federal Republics at that"? This was moved in a former meeting of the Assembly. You did not accept that. But the position was quite different then. You were suspecting the Pakistan people might make mischief. But they have been separated now. Some Muslim Leaguers raised this objection; "Now that India and Pakistan have become two different things, what is the meaning of the All-India Muslim League?" All-India Muslim League means the Muslim League of India, *i.e.* of the minority Provinces. So, they said, "If you want to have a Muslim League, you can start one for Pakistan, where we the Muslims of the Muslim minority provinces can have no influence, except through the Council of the All-India Muslim League which according to the decision of Mr. Jinnah still exists and to which new members have already been elected. I am one of the from U.P. (*Interruption*).

Mr. President. Order, order.

An Honourable Member: Does the speaker think that this is the All-India Muslim League Council?

Maulana Hasrat Mohani: No, no. I am pointing out that I have nothing to do with Pakistan except as a member of the All-India Muslim League Council. Where is the harm if we take the Union Constitution first. You have deliberately put the Provincial Constitution here first. What is the meaning of that? By taking this model provincial report first you are doing us a very grave injustice. Of course, you can have it passed. But you cannot prohibit the provinces from demanding independence and becoming republics. You have said "We want only a Unitary Republic". Then why have you introduced the word "Federation" in your report here? It is simply to deceive the public. You fight shy of the word "Unitary". Therefore to have your way you have said "Federation". This is why you want to preclude the provinces from demanding republic government. But I tell you, you cannot compel them. You cannot impose your authority on them. We want a Union of Socialist Republics and if you persist in imposing

nationalism and a nationalist constitution on your provinces you will soon be swept off the face of the earth.

(Messrs. M. Ananthasayanam Ayyangar, Khurshed Lal, V. Muniswami Pillai, Dr. P. Subbarayan, T. A. Ramalingam Chettiar, Ajit Prasad Jain and R. K. Sidhwa did not move their amendments.)

Mr. President: These are all the amendments of which I have received notice in regard to Clause 1. As there was a wish expressed by some members to bring in amendments and as I wanted to consider that wish, I have just allowed one amendment to be moved. The others have not been moved. That amendment will be considered tomorrow.

As regards the Union Constitution Report, I understand it has been already circulated to members and I would request members to send in notice of amendments to that Report by Thursday evening.

Now we adjourn till tomorrow at 3 P.M.

The Assembly then adjourned till Three of the Clock on Wednesday, the 16th July, 1947.

APPENDIX

No. CA.64/Cons/47

CONSTITUENT ASSEMBLY OF INDIA

COUNCIL HOUSE,
NEW DELHI, THE 27TH JUNE, 1947.

FROM

THE HON'BLE SARDAR VALLABHBHAI PATEL,
CHAIRMAN, PROVINCIAL CONSTITUTION COMMITTEE.

To

THE PRESIDENT,
CONSTITUENT ASSEMBLY OF INDIA.

SIR,

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

I have the honour to be,
SIR,
Your most obedient servant,
VALLABHBHAI PATEL,
Chairman.

CONSTITUENT ASSEMBLY OF INDIA

PROVINCIAL CONSTITUTION COMMITTEE

Memorandum on the Principles of a model Provincial Constitution

PART I

GOVERNORS' PROVINCES

CHAPTER I

The Provincial Executive

1. Governor.—For each Province there shall be a Governor to be elected directly by the people on the basis of adult suffrage.

[*Note.*—The Committee were of the opinion that the election of the Governor should, as far as possible, synchronize with the general election to the Provincial Legislative Assembly. This may be difficult to provide by statute, because the Legislative Assembly may be dissolved in the middle of its term.]

2. Term of Office.—(1) The Governor shall hold office for a term of four years, except in the event of death, resignation or removal.

(2) The Governor may be removed from office for stated misbehaviour by impeachment, the charge to be preferred by the Provincial Legislature, or where the Legislature is bicameral, by the Lower House of the Provincial Legislature and to be tried by the Upper House of the Federal Parliament, the resolution in each case to be supported by not less than two-thirds of the total membership of the House concerned.

(3) The Governor shall be deemed to have vacated his office by continued absence from duty or continued incapacity or failure to discharge his functions for a period exceeding four months.

(4) The Governor shall be eligible for re-election once, but only once.

3. Casual vacancies.—(1) Casual vacancies in the office of Governor shall be filled by election by the Provincial Legislature on the system of proportional representation by means of the single transferable vote. The person so elected shall hold office for the remainder of his predecessor's term of office.

(2) In the event of the Governor's absence from duty or incapacity or failure to discharge his functions for a period not exceeding four months, the President of the Federation may appoint such person as he thinks fit to discharge the Governor's functions until the Governor's return to duty or until the Governor is elected, as the case may be.

4. Age qualifications.—Every citizen of the Federation of India who, has reached his 35th year of age shall be eligible for election as Governor.

5. Disputes regarding election.—Disputes regarding the election of a Governor shall be enquired into and determined by the Supreme Court of the Federation.

6. Conditions of Governor's office.—(1) The Governor shall not be a member of the Provincial Legislature and if a member of the Provincial Legislature be elected Governor, he shall be deemed to have vacated his seat in that Legislature.

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

(3) The Governor shall have an official residence and shall receive such emoluments and allowances as may be determined by Act of the Provincial Legislature and until then such as are prescribed in Schedule.

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

7. Executive authority of Province.—The executive authority of the Province shall be exercised by the Governor either directly or through officers subordinate to him, but this shall not prevent the Federal Parliament or the Provincial Legislature from conferring functions upon subordinate authorities, nor shall it be deemed to transfer to the Governor any functions conferred by any existing Indian law on any court, judge or officer or local or other authority.

8. Extent of the Executive authority of Province.—Subject to the provisions of this Constitution and of any special agreement, the executive authority of each province shall extend to the matters with respect to which the Provincial Legislature has power to make laws.

[*Note.*—The reference to special agreements in this provision requires a word of explanation. It is possible that in the future there may be Indian States or groups of Indian States desiring to have a common administration with a neighbouring Province in certain specified matters of common interest. In such cases, the Rulers concerned may by a special agreement cede the necessary jurisdiction to the Province. Needless to say, this will not interfere with the accession of the State or States concerned to the Federation, because the accession to the Federation will be in respect of Federal subjects, whereas the cession of jurisdiction contemplated here is in respect of Provincial subjects.]

9. Council of Ministers.—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.

[*Note.*—For the most part, the Governor will act on advise, but he is required to act in his discretion in the following matters:—

(1) the prevention of any grave menace to the peace and tranquility of the Province or any part thereof (Clause 15 (2) of this Part),

(2) the summoning and dissolving of the Provincial Legislature (Clause 20 of this Part),

(3) the superintendence, direction, and control of elections (Clause 22, proviso (2) of this Part),

(4) the appointment of the Chairman and the members of the Provincial Public Service Commission and of the Provincial Auditor General, (Part III).

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].

10. 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.

11. 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.

12. Other provisions as to ministers.—The Governor’s ministers shall be chosen and summoned by him and shall hold office during his pleasure.

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.

14. Conventions of responsible Government to be observed.—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.

[*Note.*—Schedule..... will take the place of the Instrument of Instructions now issued to Governors.]

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

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

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

16. Advocate-General for Province.—(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.

17. Conduct of business of Provincial Government.—All executive action of the Government of a Province shall be expressed to be taken in the name of the Governor.

18. Rules of Business.—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.

CHAPTER II

The Provincial Legislature

19. Constitution of Provincial Legislatures.—(1) There shall for every Province be a Provincial Legislature which will consist of the Governor and the Legislative Assembly; in the following Provinces, there shall in addition, be a Legislative Council (here enumerate those Provinces, if any, which desire to have an Upper House).

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

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

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

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

(a) The total numerical strength of the Upper House should not exceed 25 per cent. of that of the Lower House.

(b) There should be within certain limits functional representation in the Upper House on the lines of the Irish Constitution, the distribution being as follows:—

one-half to be elected by functional representation on the Irish model;

one-third to be elected by the Lower House by proportional representation;

one-sixth to be nominated by the Governor on the advice of his ministers.

[*Note.*—Under the existing Constitution, Madras, Bombay, Bengal, U. P., Bihar and Assam have two Houses and the rest one. It was agreed that the members of the Constituent Assembly from each Province should vote separately and decide whether an Upper House should be instituted for the Province. There is to be no special representation in the Legislative Assembly either for universities, or for labour or for women.]

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

21. Language.—In the Provincial Legislature, Business shall be transacted in the Provincial language or languages or in Hindustani (Hindi

or Urdu) or in English. The Chairman (where there is an Upper House) or the Speaker, as the case may be, shall make arrangements for giving the House, where he thinks fit, a summary of the speech in a language other than that used by the member and such summary shall be included in the record of the proceedings of the House.

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

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

Provided

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

CHAPTER III

Legislative powers of the Governor

23. (1) If at any time when the Provincial Legislature is not in session, the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require.

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

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

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

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

CHAPTER IV

Excluded and Partially Excluded Areas

[The provisions of this Chapter cannot be framed until the advisory Committee has reported.]

PART II

The Provincial Judiciary

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

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

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

PART III

Provincial Public Service Commission and Provincial Auditor-General

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

PART IV

Transitional Provisions

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

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

[*Note.*—These provisions are necessary in order that there may be a Legislature and a Government ready to take over power in each Province as soon as this Constitution comes into force.]

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