

Wednesday, 18th December, 1946

Volume I



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CONSTITUENT ASSEMBLY OF INDIA

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Temporary Chairman:

DR. SACHCHIDANAND SINHA.

Constitutional Adviser:

SIR B.N. RAU, C.I.E.

Secretary:

SHRI H.V.R. IENGAR, C.I.E., I.C.S.

Deputy Secretary:

MR. B.F.H.B. TYABJI, I.C.S.

Under Secretary:

KHAN BAHADUR S.G. HASNAIN.

Assistant Secretary:

MR. K.V. PADMANABHAN.

Marshal:

SUBEDAR MAJOR HARBANS LAL JAIDKA.

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CONSTITUENT ASSEMBLY OF INDIA

Wednesday, the 18th December, 1946

The Assembly met in Constitution Hall, New Delhi, at Eleven of the Clock, Mr. Chairman (The Hon'ble Dr. Rajendra Prasad) in the Chair.

PROGRAMME OF BUSINESS

Mr. Chairman: I have received a note from Mr. Mohan Lal Saksena asking me to make a statement with regard to the progress that has been made in the Rules Committee. I think it would be helpful to the Members in making their future programme if I made that statement today. We have been discussing drafts which had been prepared before and we have gone through a great part of the work, but some work still remains to be done and the final draft will have to be considered by the Rules Committee before being placed before this House. I hope we shall be able, to complete this work by Friday and I propose to hand over to Members the rules in their final form as passed by the Rules Committee on Saturday, so that we may take them up for consideration by this House on Monday next. Monday happens to be the 23rd and after that we have the Christmas holidays. I do not think we shall be able to complete the rules in one day. They will take at least two days or it may be three days. If the Members agree I propose that we observe Christmas holidays for two days 24th and 25th and then the Assembly continues sitting thereafter. So on the 26th and 27th we may discuss the rules and finish them by the 27th and anything else arising out of the rules we may do thereafter. I do not think we should finish this preliminary session before passing the rules and before appointing certain committees which it is the intention of the preliminary session to appoint. This is the programme as I envisage at present. It all depends upon the House. Hard pressed as we are for time, I do not think we could afford to go without any work during the whole of the Christmas week. I think we should take holidays on the 24th and 25th of this year.

Sri M. Ananthasayanam Ayyangar (Madras: General): We would like to have the whole week of Christmas as holiday and we would like to go back during this period and meet again after the beginning of next year.

Mr. Chairman: It is not expected that the Members should go home if we have only a holiday of two days.

The Hon'ble Pandit Hirday Nath Kunzru (United Provinces: General): Mr. Chairman, it was expected by most of us when the session commenced that it would end before Christmas and on that footing we have made engagements which will keep us busy during Christmas week. I am not asking for any holidays at all. I should be quite prepared to do without them altogether, but having accepted engagements which are of a somewhat important character, it would not be possible for many of us to attend the session if it is continued after the 23rd of December. I hope, therefore, that you will be good enough to take this into consideration before deciding when the Constituent Assembly should meet again in order to pass the rules and appoint those committees to which you have referred.

Mr. Dharendra Nath Datta (Bengal: General): Mr. Chairman, Sir, you have just told us that the rules should be placed before us on the 23rd of December and considered on the 26th, but some time is necessary for putting in amendments. I do not know what is the practice here but in the legislatures elsewhere, at least 4 or 5 days' time is given. So it is impossible

[Mr. Dharendra Nath Datta]

to begin the consideration of the rules on the 26th and I think under the circumstances, it is desirable that we should meet on the 2nd of January.

The Hon'ble Rev. J. J. M. Nichols-Roy (Assam: General): Mr. Chairman, Christmas holidays are very important for Christians and we usually get holidays on the 24th, 25th, 26th and 27th and we shall be glad if this Constituent Assembly will meet again on the 2nd or 3rd of January. Then we can carry on as long as we want, but if we meet during this year after the 25th *i.e.*, during the Christmas holidays, it will be very inconvenient for the work of this Assembly and will also disturb many of our engagements which we have already made during the Christmas holidays. That is all I have to place before this House, Sir.

Mr. D. P. Khaitan (Bengal: General): Sir, I am rather surprised at the way in which the Members of the Constituent Assembly have not agreed with your programme as announced by you. The work before the Constituent Assembly must gain precedence over every other work and we should proceed with as much speed as we possibly can. We should not desparate before we have passed the Rules of Procedure which are so essentially necessary. Therefore, through you, Sir, I appeal to all the Members of the Constituent Assembly to lay aside all other work and give precedence to the important work that lies ahead of us.

Shri Mohan Lal Saksena (United Provinces: General): Mr. Chairman, I would like to make the suggestion that in order to facilitate the work of the Procedure Committee this House may not meet tomorrow and it may meet the day after tomorrow in the afternoon, so that we may have the report of the Committee in full and consider the rules from Saturday and if possible we might finish it on Monday.

Mr. R. K. Sidhwa (C. P. and Berar: General): I think the House is entitled to have a number of days for studying the report and also presenting amendments. In our party meetings also we shall have to consider them. It may take two or three days. It may not be possible to finish the work in two or three days as Mr. Mohan Lal Saksena says. I would therefore support the motion that we meet on the 2nd or 3rd January after presenting the report of the Committee on 21st or 23rd.

Mr. Chairman: There are certain other public functions, which have been announced very long before, which take place in the first week of January. It was for this reason that I was anxious to complete the work of this Assembly before the year is out. For example, the Science Congress is going to begin on the 2nd January next. Eminent scientists from all over the world are coming and Pandit Jawahar Lal Nehru is going to have a very important function there, and there may be other members also who may be interested in it. Similarly, there are other functions which have been fixed. I was therefore anxious not to disturb those public functions which have been announced already and to complete our work as much as possible within this year. Of course it rests with the members of the Assembly. If they do not wish to sit beyond the 23rd, we shall have to take that also into consideration and go into the next year. The difficulties that confront us, I have placed before you. In January, there will be a further difficulty; some Provincial Assemblies will meet.

The Hon'ble Shri Purushottam Das Tandon (United Provinces: General): The business of the Provincial Assemblies can be adjusted suitably.

The Hon'ble Sardar Vallabhbhai J. Patel (Bombay: General): Sir, in a House consisting of about 300 important members it is difficult to suit the convenience of all. We have the Budget Session of all the Provinces also.

There is the Budget Session of the Central Assembly. It is not possible to meet the convenience of all. As has been rightly suggested, precedence should be given to the work of the Constituent Assembly. We will not be able to make any progress with the work of the Constituent Assembly till we have passed the Rules. The Rules we must finish before we disperse and then we can adjourn. The preliminary session may not be finished during this month or even in the first week of January. Therefore to suggest that we should meet on the 3rd or 4th January is not practicable. With all the inconvenience that we may have to put up with, we must finish the Rules. Therefore, if as the Chairman has suggested, the Rules are ready on the 23rd, either we give up the holidays on 24th and 25th or we come on the 26th and 27th and finish the Rules. Then we can fix the date for adjournment. Without the programme being fixed, we will not be able to dispose of our work. Therefore, let us provisionally fix the programme and then consider other matters.

Sri K. Santhanam (Madras: General): I wish to suggest that the Rules may be placed before the Assembly as they are ready. Why should we wait till all the Rules have been completed. We can take them up from tomorrow or this evening. I am really surprised that the Committee should not have been able to draft even a portion. We can take up portions and go on passing them. When they are completed, we shall have also completed.

Mr. Chairman: I do not think it is possible to take up the Rules piecemeal. We have to take them as a whole.

The Hon'ble Shri Purushottam Das Tandon: I suggest, Sir, that we should keep in view that a large number of members have already entered into engagements for the Christmas week. It is no good-telling us now that we had no business to enter into such engagements. Ordinarily, it is supposed that during the Christmas week, we will not be working here actively. Of course, members will give some part of their time to the Rules if presented to them before we disperse. They should be given some time to think over them. As has been pointed out, possibly the Parties also may have to consider them in their party meetings. I think, Sir, we should not take up the question of rules during the Christmas week; sufficient time should be given to the members to think over them, to digest them and to send in amendments. We can meet some time in the first week of January.

Mr. Chairman: Now we have heard different speakers and their opinions. We shall take some decision tomorrow after consideration of these points. In the meantime, we will proceed with our business. We take up the discussion of the Resolution and the amendments.

RESOLUTION RE: AIMS AND OBJECTS—*contd.*

The Hon'ble Rev. J.J.M. Nichols-Roy (Assam: General): Mr. President Sir, thank you for giving me this opportunity to speak on this Resolution. I stand here to support the Resolution moved by Pandit Nehru, with all the force that I can command. This Resolution contains all the principles that need to be enunciated in such a kind of Resolution to be placed before this House. First of all, it has stated the objective that we all in India have in our minds, that is, to proclaim at a certain date the independence of India. Here we have only resolved that we shall proclaim the independence of India and we have that firm resolve in our mind to get the independence of India. That is the desire of every one in India. I cannot imagine that there will be anybody in India from one end of India to the other end, who will be against that kind of objective. Then it proclaims

[The Hon'ble Rev. J.J.M. Nichols-Roy]

also that the kind of Constitution that we shall make will be a republican form of Government,—a democratic form of Government,—a Government by the people and for the people. That is surely the desire of all the people of India. It is true that there are some monarchies in India but we envisage the time when all these monarchies will become at least wholly constitutional monarchies like the Monarchy of England, and we believe that even the people of all the States envisage that in their own States, there will be a democratic form of Government. Therefore there can be no objection at all to these declarations that we have in this Resolution. Then it speaks of the territories which will be included in the Union of India and it is comprehensive enough. Then in the third para it speaks of autonomous units—that those autonomous units which are now autonomous according to present boundaries or with such other boundaries as they may have afterwards,—these units or territories will remain autonomous units together with residuary powers and will exercise all powers and functions of government and administration, save and except such powers which are assigned to the Central Government. This is our desire, this is the desire of all the people of this country. It is the object before us that each Province will be autonomous. In this connection, Sir, I want to say that it is very unfortunate that the idea of Sections was introduced in the Cabinet Mission Declaration and that in a Section according to the latest interpretation given by His Majesty's Government a certain Province will be outvoted by the Majority of members of another Province. I speak especially in connection with Section 'C' which relates to Assam: Assam is a non-Muslim Province. There are 7 non-Muslims who are representatives of Assam in this Constituent Assembly and 3 are Muslims. I am sorry that my Muslim friends are not present here, in this Assembly. I wish they were here. In Bengal, Sir, there are 27 non-Muslims and 33 Muslims. If we are brought into a Section, there will be 36 Muslims and 34 non-Muslims and if the voting in that Section will be by a majority vote, a simple majority vote as interpreted by His Majesty's Government, it will mean that our Constitution, our Assam Constitution, will be framed by the Majority of the people of Bengal, that is the Muslim League. We cannot conceive of anything that is so unjust as this, Sir, (Cheers). It is a matter which should be considered by all the members of this Constituent Assembly. When the Cabinet Mission made its Declaration, we in Assam thought that such kind of interpretation might be given in the future but we took it for granted that the Cabinet Mission would not be so unreasonable as to place Assam which is a non-Muslim Province to come under a Muslim Province and that our constitution would be framed by the majority of the members in the Section. We never thought that it would be like that, because we considered that it is unjust for the people of Assam to be placed in such a position. In the month of June 1946 we had a public meeting in Shillong. I happened to be the Chairman of that meeting. We were discussing about the Declaration of the Cabinet Mission and in that meeting I said this:—

“From this paragraph 15 (v) of the Cabinet Mission's Declaration I understand that each Province has freedom to form or not into a group suggested by the Cabinet Mission. Secondly, that the grouping will be, as independent provinces, to discuss what subjects could be taken as common subjects to be dealt with by the group. Thirdly, that if a province does not agree in regard to subjects which may affect it vitally, there will be no group constitution as recommended by para. 19 (v) of the Declaration. Fourthly, that if one province, in the discussion, finds it impossible to settle the question in the group, it will not be forced by a majority vote of the members of another Province. Fifthly, that the whole question will be brought before the whole Constituent Assembly which will have the power to decide finally.”

That is what we understood by the Declaration of the Cabinet Mission, and, I believe, Sir, that was also the view which the Congress took at that time. I was very much gladdened by the declaration of Sardar Vallabhbhai Patel the other day that the Congress had not up to the present time accepted the interpretation of His Majesty's Government. Sir, we still hold that position. It appears to me that the British Cabinet Mission has changed its mentality from what it was when they were here in India. When they were in India they were under certain circumstances and were influenced by the opinion at that time in this country. When they have gone back to England they are placed under a different circumstance, influenced by the Conservative Party there, and the force which Mr. Jinnah has placed upon their minds. They have changed their opinion altogether. That is what appears to me. I would like to know from Lord Pithick-Lawrence whether in reality there was that idea in the minds of the Cabinet Mission when they were here in India. There was nothing in any of their declarations, in any of their writings that said that the vote in the Sections would be by a simple majority vote. The principle of driving by force a non-Muslim province to come under a Muslim province is absolutely wrong. Mr. Jinnah has forced His Majesty's Government to commit this great injustice to our Province, and we feel, Sir, that we shall have the sympathy and support of this august body, that our Province may not be driven to that pitiable condition. I want Mr. Jinnah and the League Members to be here and I want them to come here to take part in the framing of the constitution of India. I will expect him and all the others to be just. I do not want anything else except that they will act like gentlemen and be just. It is unjust, everybody knows, that we should be forced into such a position in which we are now placed by the recent interpretation of His Majesty's Government. We are an autonomous province and a non-Muslim province. Why should we be forced to go to that kind of a Section which could outvote the province of Assam and frame the Constitution according to the desire of the majority, created artificially. Now, Sir, it may be said that this will at once bring a conflict between the British Government and this Constituent Assembly. This need not be. Someone said to deviate from the four walls of the Declaration of May 16th and to give a different interpretation would be revolutionary. This Constituent Assembly need not adopt that attitude at all. I believe that we can adopt a friendly attitude. We shall say to the British Government: "We thank you for the good effort you made to bring a compromise between the Hindus and the Muslims. You have given to us good advice and made good recommendations. You have acted as makers of peace. We shall, as far as practicable, implement your recommendations, but we shall, like responsible persons, be free to deviate from them whenever we find it is impracticable and unjust to carry out literally to the letter any of your recommendations. We shall frame a constitution which will do justice to all minorities and which shall not overlook any community. If the members of the Muslim League will co-operate, we shall heartily welcome them. After we have finished framing the constitution, the whole of India will get the opportunity to see what kind of constitution this Constituent Assembly has framed; we request you, British gentlemen, not to make speeches in Parliament which will suggest revolutionary activities in India. Kindly co-operate with us quietly until we finish our work, and then judge our work." Then only the British Government will have the opportunity to see what kind of a constitution this Assembly has framed. Then, and not till then, can they say that this Constituent Assembly has been just or unjust to a certain community or to the Muslims. We do expect that the Muslim community will come here and co-operate in framing the Constitution of India. There is no one who wishes their attendance here more than I do. I have some very good friends of mine among the members of the Muslim League and I would like to see them come here and co-operate with this Assembly.

[The Hon'ble Rev. J.J.M. Nichols-Roy]

I now turn to another portion of this Resolution, namely, paragraph 5 and before I do that, I must point out another thing. I envisage that in the autonomous Provinces there will be units in a Province which will be self-governing and which will be connected with a Province. This will be necessary do doubt, in a Province like Assam.

Now, to turn to paragraph 5. In this paragraph we have provisions regarding justice and freedom,—social justice, justice in the economic and political field, ensured to all. Political justice, no doubt, will mean that every community will get representation in the legislatures as well as in the administration of the country. Therefore, there need be no fear in the mind of any community that this Constituent Assembly will not look after their interests.

Then there is mention, there, of the freedom of thought, expression, belief, faith and worship. There was a propaganda made in this country by some parties that when there will be self-government in India, some religious faiths will not be allowed to propagate their faith. This is really false propaganda. This Resolution has declared that this will not be the case. There will be provision in the Constitution of India for the freedom of all religious faiths and for the propagation of those faiths according to their own desire. I am particularly glad that this para. speaks of association and action, subject to law and public morality. Public morality needs to be protected by Government and righteousness needs to be exalted. "Righteousness exalteth a nation, but sin is a reproach to any people".

I would like to speak on other points of this Resolution but, I don't think I need dwell on them at all. There are difficulties and hindrances before us. India is not an exception to difficulties of this nature; such difficulties confronted Canada, Australia and even the United States—when they were engaged in the work of framing their constitutions, and some parts of those countries did not come into the constitution at the beginning, although they came in afterwards. That very same thing may be repeated here in India. We shall have to go on framing the constitution and then when that is placed before the world and before this country, it will then and then only be the proper time for the people of England or the British Government to say that it is not a constitution according to their Declaration. Before that happens, they should not try to prejudge what this Constituent Assembly will do and thus cause obstruction to its work.

Mr. Chairman: The Hon'ble Member has exceeded his time.

The Hon'ble Rev. J. J. M. Nichols-Roy: I want to speak on only one more point, which has impressed me from the speech of Viscount Simon in the House of Lords. Viscount Simon has said that this Constituent Assembly, if it carries on the work of framing a constitution for India, will "threaten" India "with a Hindu Raj". I was very much surprised when I saw these words in a newspaper this morning. When I was in Western countries—in England and also America, I was impressed by the fact that some people in those countries had an idea that a Hindu is a man who is steeped in his caste system and who worships a cow. If this is the idea which Viscount Simon has when he refers to a Hindu Raj' *i.e.*, that the people of India will be forced to perpetuate the caste system and to worship a cow, then he is entirely wrong. If the people who are assembled here,—whether they be Hindus, Muslims, or Christians, or whatever other religion they may profess—if they frame a constitution which will be a democratic constitution, which will do justice to everybody, why should that constitution be called a Hindu Raj? And if by 'Hindu' is meant people who live in India, surely we should have a constitution for the people of India. That is exactly what we want: we want a constitution to be made by the people of India, but if some people in India do

not want to come into the constitution just now, they will come afterwards and I envisage a time when they will all enter into this constitution and make India one country—one united country,—with a democratic form of government. I have faith that all these hindrances will be removed by prayer to God. Let us follow the example of Mahatma Gandhiji—our Bapuji and pray to God. Let us pray to God that all these hindrances may be removed from our way and that we may be able to carry on the work of framing a constitution which will be a blessing to our whole country.

Mr. R. K. Sidhwa (C. P. and Berar: General) : Mr. Chairman, Sir, the demand made by the Indian National Congress for framing a constitution for free India has now become an accomplished fact. We are here to frame a constitution for India and we are sure—whether our friends the Muslim Leaguers whom we welcome—speaker after speaker has stated that they miss their presence here—whether they come in or not, let me state, that with all the threats that have been now thrown at us by the Britishers during the last four or five days in the House of Commons and the House of Lords we shall proceed with our business and shall frame a constitution which they dare not refuse to implement. If they choose not to implement it when the occasion arises for them to do so, then we know how to implement it. Sir, if poverty as to be eradicated from India, to bring human happiness to this country and our constitution should be based on the socialist principle and such a constitution. I am confident when it is completed will be welcomed by all in this country and also outside this country. Much fetish has been made many a time about the minority question. Sir, all reasonable safeguards and all interests will be reasonably considered while framing this constitution but I do not understand why the question is brought to the forefront. In this very resolution, in paragraph 3, you will see how we have safeguarded, without anybody else's telling us, the interests of the minorities. Paragraph 4 relates to residuary powers, which we have accepted, not because the British Delegation want us to do so. This matter had been receiving the serious consideration of the Congress as you know, Sir, for a number of years, and to allay the fears of the Muslim Leaguers, we came to a decision in August 1942 that there should be residuary powers in the provinces. Many of us even today do not like the residuary powers to be vested in the provinces; we want a strong Central Government. If a free vote is taken in this House or in the country, they will oppose residuary powers being vested in the provinces. But simply because we want to allay the fears of the Muslim League, imaginary or real, we respect their feeling and accepted that residuary powers shall vest in the provinces. May I ask who came forward to safeguard the interests of the minorities? It is the Congress and the majority community that have said that the provinces shall have residuary powers. Whether leaguers are here or not, as Hon'ble Congressmen we will stick to that resolve. We do not want to go back, even if the Muslim League choose to remain absent upon that pledge; even though we do not like it we shall implement it. That is one instance that I want to point out to the Britishers when they tell us how we are ourselves alert in safeguarding the interests of the minorities. But if you make unreasonable demands. It is certainly not possible for the majority community to be converted into a minority community. In this very paragraph there is a reference regarding redistribution of provinces. I am a firm believer in the redistribution of the present provinces. (*Hear, hear*). The present heterogeneous way in which, without any thought, or without any sense these provinces have been formed, requires immediate revision. Coming from the Province of Sind, as I do, I know ten years ago when we were separated from Bombay there was 22 crores of rupees of debt to the Government of India. We have wiped off that debt in 7 years—I do not want to enter into the details of the advantages that we have achieved by separation.

[Mr. R.K. Sidhwa]

But what I would state is that this paragraph is so guardedly framed as to respect the feelings of the Mussalmans, so that the present provinces may be taken into consideration in going into Sections. If I were free I would suggest an amendment that the provinces should be redistributed straightaway and the boundary commission appointed immediately and then the constitution should be framed. But here also we want to keep to our promise to go into Sections within the framework of the Declaration of May 16. I point out these things in order to show to the world that without any interference or dictation or advice that has been given to us day in and day out in the House of Commons and in the House of Lords—the mischievous statements and mischievous speeches that are being heard from the British to-day,—we do our legitimate duty. We cannot tolerate this kind of propaganda, which have falsely raised the question of minorities and raised the usual bogey of communal disturbances. When the Delegation came they were in a different mood because there were political riots. The army, the navy and the air force were in revolt before they came. It was a political riot. Now, Sir, the Services in India feel that their days are numbered. They have started making capital of communal disturbances. Now that there is communal tension the British Cabinet want to go back upon what they stated when they came over here. The British Government have told us that, if we do not frame the constitution according to their interpreting clause 15, it shall not be forced upon the minority community. I come from the minority communities, it is a very small minority comparatively an insignificant number, but still that community, as the world knows, although we are a lakh of Parsis only—the Parsi community is known all over the whole world. As Babu Purushottam Das Tandon pointed out in seconding the Resolution, in the earlier days of this country's history, whosoever came in this country were welcome. 1300 years ago when we were driven away from Iran so the history say, and were wandering in the sea for three months, nobody gave us a shelter excepting the Jadhwa Rana of Sanjan in Gujarat. We are grateful to him. We have had no grievance against the Hindu community, so long as we have been here. The Parsis have taken prominent part in politics, social and industrial enterprises; amongst the founders of the Indian Congress that great man Dadabhoy Naoraji was one. (*Cheers*). In 1909 from the presidential address in Calcutta he coined the word "Swaraj". Parsis were the pioneers in the industry of shipbuilding and textiles. They were the first to introduce female education, so in charitable organisation like hospitals irrespective of caste and creed. As recently as 30 years ago the Iron and Steel Industry of India which is the second largest in the whole world was started by the Tata family. I do not say all this to glorify my community. All I want to show is that the majority community have never forgotten us; and on our part we have not lagged behind in taking part. We were forced by the British people to ask for separate electorates. We have refused. In the general electorate our community's interests are absolutely safe. I know of an instance where 30 years ago the mischief of separate representation was forced for the purpose of upholding British rule in this country. In Sind we had in the local bodies general representation without any communal representation. The then Commissioner of Sind called some of the Mussalmans to the Government House and told them secretly. "You give us a representation demanding separate electorates and I shall recommend to the Government of Bombay". Such representation was given and ever since there are separate electorates in our Sind Municipality. Thus, we have seen with our own eyes how mischief is played by the British by dividing one community against another. Parsis have been asked many a time to demand separate electorates. We have refused and replied, "We are quite safe with our majority community." See the goodness of the majority community in this very Assembly.

We have all been all elected by their votes. May I say that those who opposed our cherished goal of achieving freedom were opposed to our goal for they have also been elected by the majority community. We do not consider anybody a foe although they may have opposed our cherished views or cherished demand, I mean the Anglo Indians, yet we have elected them. This is a Magnanimity which one ought to appreciate. What kind of safeguard do the Britishers want unless it is to create the usual old mischief? But let me tell the British Government, the time has come when this mischievous propaganda that is being carried on intentionally today to disturb the Constituent Assembly work cannot help them. We shall proceed with our work. We shall proceed in spite of the difficulties and hurdles and machinations that have been carried on in season and out of season, particularly at this juncture. Instead of Sir Stafford Cripps or the Secretary of State telling Mr. Jinnah "You got the interpretation of particular clause, as you want and you must stop the propaganda of Pakistan." The Cabinet Mission discussed, investigated and have come to the conclusion that Pakistan is neither feasible practicable nor advisable and therefore that question is buried once and for all. Yet now in the Parliament during the recent debate have you said a single word to Mr. Jinnah, to stop making speeches of pernicious, poisonous propaganda on Pakistan? Mr. Jinnah day in and day out, whenever he goes either to a press conference or in his statements, goes on reiterating the story of Pakistan. We do not know therefore what he wants notwithstanding the decision that the British Delegation has given in their Statement of May 16.

Unless the British Government want to go back upon it, they should tell Mr. Jinnah to stop this propaganda, poisoning the minds of the people which causes communal disturbances in this country. Instead of telling him so, they have the effrontry to give advice to the minority community. We cannot understand what is it that they really want and what is it that is working in their mind. Was it to frustrate our object of meeting here on 9th December that they invited the Muslim League to London? But, all honour to our leaders; they stuck to their decision to hold the first meeting of the Constituent Assembly on 9th December despite the fact that the Hon'ble Pandit Nehru had to go to England the previous week, assuring us that he would return on 9th December and participate in the opening ceremony of the Constituent Assembly. We have been thwarted in many ways. They want to stop our work. That is clear from the speeches delivered in the Parliament. A day ago we were told "You can go to the Federal Court, and take decision soon". Next day the Secretary of State says: "You may go to the Federal Court; but we were not bound by any decision that the Court takes". Have we not met here in very large numbers in this Assembly? We will go on with our work. We will face any difficulty that arises and try to solve it as we have done in the past. We have already prevented great harm being done to the major community. We have done that in the past and we shall do that again in order to bring about solidarity and drive away the British people from this country. We can do that.

But let me ask why is the Muslim League remaining out? They want the British people to tell us that even if we assemble here and frame a constitution, they would not implement it. Let them say so. We will draw up a constitution and place it before the bar of public opinion. We have in this world unbiassed countries of unbiassed mind who will judge our actions rightly, justly and truly. Only a jaundiced eye will see everything yellow and wrong. In the South African dispute the United Nations Organisation Delegates supported our just cause although Britishers opposed us. Our cause is just, we shall proceed with our work and prepare a Constitution which will be one to be proud of. (*Applause*).

Sri Biswanath Das (Orissa) : Sir, I support the Resolution on behalf of the delegates from Orissa. The Resolution moved by the Hon'ble Pandit Jawahar Lal Nehru is divided into four parts. The first part contains the main objective for which we have been fighting. The second part refers to the territorial jurisdiction of a free, independent republic of India, including land, air and sea. The third is a declaration that we derive power and authority from the people, while the fourth is a very necessary and essential one, beginning with individual freedom in safeguards for tribal areas and the rest.

Sir, these are the necessary preliminaries to any constitution. It would be therefore unfair and undesirable if we do not face the problem at the start. There is no opposition to this Resolution, as the amendment moved by the Right Hon'ble Dr. M. R. Jayakar only seeks to adjourn its consideration for a month. The Hon'ble Member admits that he fully agrees with the subject matter of the Resolution. I fail to understand how a month's adjournment would make any difference.

Sir, a substantial contribution to the discussion was made by my friend, Dr. Ambedkar. He said he has no objection to the other paragraphs of the Resolution except paragraph 3 which has left out the word 'grouping'. Sir, in this connection I have to make an appeal to him. The objection to the omission of the word 'grouping' need not be taken seriously, because we have stated nothing in the Resolution against grouping. That very fact keeps the matter of grouping open, absolutely wide open. I would at this stage refer my friend, Dr. Ambedkar, to paragraph 19 (5) of the Cabinet Mission's Scheme wherein it has been specially stated that the Sections are to decide whether any group constitution shall be set up. Sir, we all know that the Working Committee of the Indian National Congress gave an alternative proposal regarding this. The Cabinet Mission criticised this proposal of the Working Committee and their comments are in para 14(2). Under, this scheme, if the Provinces wish to take part in any economic and administrative planning on a large scale, they would cede to the Centre optional subjects in addition to the compulsory ones mentioned by them. Having stated the position taken up by the Working Committee of the Indian National Congress, the Cabinet Mission offers its comments. The Mission say it would be very difficult to work a central executive and legislature in which some ministers who deal with compulsory subjects are responsible to the whole of India, while other ministers who deal with optional subjects would be responsible only to those provinces. Sir, with this objection the Cabinet Mission has ruled out the suggestion offered by the Working Committee. It will be very difficult, if not impossible, for small provinces to rise to their full stature if they do not have the guidance of the Centre. In this connection, I am not referring to Sections 'B' and 'C'. I am referring to Section 'A' where provinces like Orissa, Bihar, C.P., Madras and the rest are concerned. Sir, the Congress acceptance of the division of India into linguistic provinces means the creation of a number of small provinces. A number of small provinces like Orissa, Kerala, Karnataka and the like will be put to the greatest handicap if they have to make their own plans, administrative and economic. Under these circumstances, it may be that these provinces will cede all the connected powers to the Centre. There is thereafter no reason why there should be any objection. These and many other such considerations may come up later on in Sections. If the door is open without being shut it is for such proposals which may be made later on. Under these circumstances, I believe my hon'ble friend, Dr. Ambedkar, will see that it was not with any ulterior purpose that the word "Group" was omitted. It is done to afford opportunity to those provinces who come under Group 'A' I believe this explanation will satisfy Dr. Ambedkar and he will have no objection to the omission of the word "Group".

In the Resolution that has been moved, the Hon'ble the Mover has very frankly placed all his cards on the table. There is no hide and seek. All the points are placed so that the States and the Provinces will find it convenient to see at a glance. Sir, I see that, the Secretary of the States' Negotiating Committee has made a statement objecting to this Resolution. Their objections, are based on two points. The first is that they object to the term "independent sovereign republic". Secondly, their objection is centred round the fact that power derives from the people. They would not admit that power is derived from the people in the Indian States. Sir, paragraph 14 of the Cabinet Mission's Statement lays down that after the withdrawal of Britain, paramountcy disappears. In Great Britain, it has been recognised by Statutes that power emanates from the people. Parliament derives its power from the people of Britain and the same Parliament is exercising the power of paramountcy. That being the position, I do not see any reason why the State Rulers and their representatives should object to these expressions. Sir, after the withdrawal of Britain, there is no reason for anyone to think that India would think any other form of State than a republic. A republic does not necessarily mean the wiping off the States. That apprehension is unfounded. The Cabinet mission's Statement lays down that these are left to negotiations. Frankly, there is no reason for any apprehensions. They have appointed their Negotiating Committee and we have to appoint our Committee. The whole thing is thus left to negotiation.

Having said so much about the Resolution, I come to the question of certain statements made in the House of Commons. Sir, you know that a discussion on India has been thrust on the British Parliament by the Conservative Party. The leader of that party and a number of other important members of the party have contributed to the discussion, although both Labour and the Liberals stated that a discussion at this stage was unfortunate. Sir, important members of the Conservative Party have stated that this is a Caste Hindu Constituent Assembly. I am very glad that the representatives of the minority communities in India have already given their reply to this unwarranted suggestion, and I hope that other representatives of minorities will by their speeches give a decent burial to this suggestion which has been manufactured for consumption at Home and for foreign consumption and propaganda. Sir, we have in this great Assembly not only the representatives of the Hindu population of the Hindu majority provinces but also the representatives of Hindu minorities in Muslim majority provinces. We have also the representatives of the Scheduled Castes, Christians, Sikhs, Parsis, Anglo-Indians, and of Tribal and partially-excluded areas. We have amongst us also the representatives of the great Muslim community barring the leaders of the Muslim League. Under these circumstances, it is most unfair and unfortunate to call—and more so to utilise the forum of the British Parliament for foreign propaganda—that this great Assembly, the representatives of the Great Indian nation, is a Caste Hindu institution. Much has been made in the speeches in Parliament on the score of minorities. I should like to know a country which has no minorities. Even England has got her own minorities. Are not the Welsh a minority. So also are the Scots. The Welsh people are of a different race and language and are distinctly separate from Britain. In the U.S.A we have got linguistic and a racial minorities. So also in the U.S.S.R. Under these circumstances, it is unfair for the Conservative leaders in England to carry on propaganda against this country and the Constituent Assembly. It has been clearly seen that Mr. Jinnah and Mr. Churchill have become strange friends. My own surprise is that a statesman like Mr. Jinnah should have fallen into the trap of Conservatives and particularly that of Mr. Churchill. Everyone knows and the history reveals how the Conservative Party have made use of persons and institutions in every dependent country. That being the position,

[Sri Biswanath Das]

it is easy for Mr. Jinnah to realise how he and the League have been made use of by the British Conservatives. It remains therefore for us to see who utilises whom and to what extent. Let us hope that the Conservatives pay in the long run to find to their surprise that they and they alone pay in the long run and Mr. Jinnah comes out sane and sober.

The Hon'ble Pandit Hirday Nath Kunzru (United Provinces: General) Mr. Chairman, judging from some of the speeches delivered in this House, it seems that the amendment before the House has been treated by some speakers as having been inspired by a spirit of hostility. As I view it, however, its object is not to obstruct but to facilitate the work of this Assembly. Its purpose is to create an atmosphere which will enable us to realise rapidly and smoothly the great aim that we have set before ourselves. I think I shall not be far wrong in saying that there are men in every part of the House who sympathise with the amendment moved by Dr. Jayakar. This very fact should suffice to convince every unprejudiced man that the object of the amendment is not to place unnecessary obstacles in our way but to pave the way to certain success. I go further and say that if the newspaper reports are correct that the next session of the Assembly will take place towards the end of January, it shows that the House feels that it ought to postpone the decision of important questions for a while on psychological grounds. The object of such a move can only be to assure all those whose interests are affected by any decisions that we may take that they will have an opportunity of expressing their views before those decisions are taken. I congratulate all those who are responsible for this decision. It is wise on our part to make every section of the people in India realise that we do not want to impose our will on any party or community, but that such decisions as we may arrive at will be the result of joint discussion carried on with the sole object of enabling India to achieve her independence and protecting the just rights of the minorities and the backward classes. This amendment seeks to do nothing more than those who are responsible for the decision that I have already referred to. It only pleads for that comprehension for which Sir Radhakrishnan pleaded so eloquently in his stirring address and which he said was one of the dominant characteristics of the ancient civilization of India.

Sir, Dr. Syama Prasad Mookerjee asked us yesterday whether, if the view embodied in the amendment is accepted by the House, it will be able to do anything for a long while. Would it, for instance, be able to do anything till the representatives of the States were able to take part in the drafting of the Union Constitution? I do not personally think that this objection has any force. If the object on which stress is laid in the Resolution before the House is to be realised, it is obvious that it can be realised in a large measure only by the Union Constituent Assembly which will draw up the constitution of the union.

The resolution may, in some measure, give a lead to the Section Committees; but even Section Committees are hardly likely to meet before April or May next. In any case the principal body whose work will be guided by the directive embodied in this resolution will be the Union Constituent Assembly and it will meet only after the Section Committee have done their work. It is obvious, therefore, that a postponement of the discussion of Pandit Jawaharlal Nehru's resolution will not retard the work of the Assembly in the slightest measure. Since its main purpose is to guide the deliberations of the Union Constituent Assembly, no harm will be done if its discussion is postponed for a while so that we may enable all those sections whose interests are affected by the resolution to have an opportunity of expressing their views. Some of the States representatives

have already protested against the immediate acceptance of the resolution by this Assembly. Their views may be right or wrong. We are not in the slightest degree concerned with this. What ought to concern us is that if the resolution is passed immediately, it will be a unilateral decision. The House will have ample opportunity later of affirming the objectives outlined in the resolution. There need be no fear that postponement of the resolution would mean the torpedoing of the purposes embodied in it. Indeed, I feel that a slight delay will strengthen our hands in dealing with this important subject.

Sir, there is another question of considerable importance which Dr. Syama Prasad Mookerjee put to us yesterday. He asked us whether we accepted the position that unless the Muslims agreed to participate in the work of the Assembly, nothing should be done. I feel that the real reason for the opposition to the amendment is this feeling voiced by Dr. Syama Prasad Mookerjee that any postponement of the resolution would bring the work of the Assembly to a standstill. Dr. Mookerjee rhetorically asked Dr. Jayakar why, holding the views that he does, he agreed at all to join the Constituent Assembly at this time. I think Sir, that it would have been most unwise to lend any Countenance to those who desired that the convocation of the Assembly should be indefinitely postponed. We have, I think, achieved a great deal by compelling the Viceroy to adhere to the date originally fixed for convening the Assembly. Had the Assembly not been convened, its future would have depended on the discretion of the executive. That discretion has, however, now passed out of the hands of the Viceroy or even the British Government. It now rests with this House and with you, Sir, as to when its next session should take place, or how and by what stages its work should be brought to a completion. As regards, Sir, the question whether this Assembly can do anything in the absence of Muslims, my reply to it will be very brief. It has been supposed by a good many speakers that if we admit the right of the Muslim League and the Indian States to participate in the discussion of the resolution before us, we shall be giving them absolute power to block the work of the Assembly. I think this shows a misapprehension of the existing position. Judging from the speeches delivered in the House of Commons and the House of Lords by the spokesmen of the British Government all that the British Government desire is that there should be agreement with regard to the procedure to be followed regarding the formation of Provincial Constitution and groups. The interpretation of para 19 of the Statement of May 16 is the only point at issue. I understand that the matter will soon be referred to the Federal Court. I hope therefore that the way will soon be open for the participation of the Muslim League, in the Constituent Assembly. If, however, this is not the only ground on which the League is abstaining from joining the Assembly, and if even after agreement has been arrived at with regard to the procedure to be followed by Section Committees, the League representatives refuse to come here, I do not think that they will be entitled to ask that the proceedings of this Assembly should be adjourned *sine die*.

The last para of the Statement issued by the Cabinet on 6th December has created a good deal of apprehension. In the present political situation it is obvious that it might be taken advantage of by those in whose interest it might be to prevent this Assembly from functioning properly. But on the whole it seems to me that the speeches delivered in the House of Commons and House of Lords disclose no such sinister intention on the part of the Labour Government. If the Muslims insisted on any condition not contained in the Statement of May 16th. I agree with Sardar Vallabhbhai Patel that we should refuse to agree to it. We cannot allow ourselves to be frustrated by the intransigence of any party. We are prepared to take into account all its reasonable demands but we cannot agree

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in any circumstances, to allow it to decide the fate of this Assembly. Should such a situation unfortunately present itself, we shall be entitled to remind the British Government of Mr. Attlee's promise that the minorities will not be allowed to veto the progress of the country. The Secretary of State for India has himself reiterated this pledge. We need therefore have no fear that if the Muslim League representatives referred to attend the Assembly even after agreement had been arrived at with regard to the interpretation of paragraph 19 of the Statement of May 16th, that their intransigence will be allowed to hold up the work of the Assembly. Sir, for these reasons, I give my hearty support to the amendment that is before us. My support, however, should not be misunderstood as implying that I am in favour of the clause in the Statement of May 16th which relates to grouping. I personally see no reason why any Province should be compelled to enter a group. I see in particular no justification whatsoever for compelling Assam to form a common Government with Bengal for any purpose. What has happened in Noakhali and which has led to the deplorable events that recently occurred in Bihar has justifiably increased the apprehensions of the people of Assam. But grouping as the Cabinet Mission have here been pointing out almost since the very day on which their statement was issued, is an essential feature of their plan. Without agreement on this point, they assert, the Assembly will not enjoy that moral authority which a gathering of this kind ought to. This is not satisfactory from our point of view but we shall be able to deal with the Position of the Provinces that are compelled against their wish to become members of a group later on when the reports of the Section Committees are before us. I repeat, Sir, with all the strength that I can command that the insistence of the British Government on driving unwilling Provinces into groups is morally speaking completely unjustified. But as I have already said before, we shall have time to consider the Constitution as it emerges from the Section Committees and the Union Constituent Assembly later on.

For the time being Sir, we are only concerned with the question whether the discussion of this Resolution should be proceeded with immediately and whether any harm would be done if it were postponed. I have shown that no harm whatsoever will be done if we waited till the representatives of the Muslim League and the States are able to participate in the discussion of this important question. Even if we pass this Resolution now, shall we morally be able to say 'no' to the representatives of these interests, should they ask us later on that the fundamental questions to which the Assembly might assent by passing this Resolution should be re-considered. I am sure, Sir, that should such a position arise we shall not find it in our hearts to refuse the request, of the Muslim League representatives and the Indian States.

One word more, Sir, and I have done. There are plenty of difficulties in our way, both in India and in England. There are still men like Lord Linlithgow who think that British authority can be reasserted in India. They are suffering from a dangerous delusion. If England allows itself to be guided by such men, it will be confronted with a far more serious position than any that she has been faced with during the last 25 years. It may for a while and only for a while, be able to keep India down by force but it will not be able to govern it even for a day. I am sure that the Labour Government realizes this and has no intention of accepting the advice given to it by men like Mr. Churchill and Lord Linlithgow or even by men like Lord Simon who are Conservatives in the guise of Liberals. Nevertheless, Sir, in view of the difficulties, both internal and external, which we

have to overcome it will be wise on our part to act in such a way as to add to the moral authority of this Assembly. We have plenty of friends not merely in this country but also in England. Let us proceed in such a way as to strengthen their hands. Let us not think of what we are entitled to do under the terms of the Statement of May 16th. Rather let us think of what it is in our interest to do on this important occasion. We may consider ourselves completely justified in passing Pandit Jawahar Lal Nehru's Resolution but of what use will be for us to exercise our rights if they only add to that discontent and unrest which it is our desire to allay? I hope, therefore, Sir, that we shall act in such a way that India may, with the assent of all sections of the people—and if that unfortunately is not forthcoming—with the assent of all those who accept the right of the country to move forward, be able to march rapidly towards the aim that we have set before ourselves, *viz.*, that of freedom and unity (*Cheers*).

The Hon'ble Diwan Bahadur Sir N. Gopaldaswami Ayyangar (Madras: General): Mr. President, Sir, I have come forward to support the Resolution and I would add that I have come forward to urge with all the strength in my power that this Resolution be pushed to its conclusion at these sittings (*Cheers*). Sir, my respect for Dr. Jayakar and Pandit Kunzru is very great I have considered with very great care all that they have said in support of this amendment proposing an adjournment of this discussion until the representatives of the Muslim League and the representatives of the Indian states have joined us. There is only one compliment I have to make against this motion for adjournment. I consider, Sir, that it lacks imagination. I say so without disrespect to my friends. say it lacks imagination because it forgets that we have just launched ourselves on a very big task and it is necessary that we should impress our country and the world that we mean business.

Now, Sir, look at this Resolution. It is a Resolution which sets out the objectives that we have to place before ourselves in framing our constitution. Is such Resolution to be postponed till we reach the last stage of our work in this Assembly? Is it not a Resolution which must preface everything that we propose to do in this Assembly? That, I think, Sir, is a complete answer to this motion for adjournment. The Mover and supporters of the amendment have urged reasons for postponing the consideration of this Resolution, but in doing, so they have themselves admitted that there is nothing in this Resolution to which either of them is prepared to take exception. I appeal to them, Sir, that if they believe in this Resolution they must pass it at this series of sittings and before we commence real business and not postpone it till we have practically completed all our business. I know that Dr. Jayakar, towards the close of this speech, suggested that the consideration of this Resolution might be postponed only for about a month or so by the end of which he hoped that the representatives of the Muslim League would have joined us. But what about the representatives of the Indian States? For no fault of this Constituent Assembly, the representatives of the Indian States have not come into this Assembly at the start, as I consider it is their right to do. But the procedure has been so regulated that they come in only at the final sitting of this Constituent Assembly. Are we to wait for them, and after all, the most vocal objection to this Resolution that has come from outside this House has come from people who represent the Indian States.

Now, taking the representatives of the Muslim League themselves, are we doing any injustice to them in proceeding with this Resolution? Their main objection to what we are doing today is the different interpretation they have put upon the clause relating today grouping. We are not discussing grouping. We are discussing this Resolution which lays down the objectives of our work—a matter in respect of which they have a perfect right

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to come and participate in this debate. What prevents them from coming and taking their seats here and debating with us here the other questions that we are taking up as a preliminary to the more important work that will follow? Their main objection will arise only when this Assembly, towards the end of the first session, proposes to split into Sections, and as I shall show in a minute, Sir, it is quite possible for them to arise all the issues that they want to arise at that stage. (*Hear, hear.*)

Now, Sir, the question as regards grouping has entered a new phase with the Statement made by His Majesty's Government on the 6th of this month, but I would not go into the merits of what they have said in that Statement. The only thing I would say is that it is a most astonishing Statement to be made by so august a body as His Majesty's Government at this stage of the controversy. Be that as it may, I do not intend to go into its merits. Now, let us see what flows from that Statement. His Majesty's Government have said that their interpretation of the Cabinet Mission Plan and the interpretation of the Muslim League agree, but they say: "Since you have agreed to refer the matter to the Federal Court, or since you say that the Constituent Assembly will do so, you may do so." And then, we have the statement of Lord Pethick-Lawrence made only yesterday, clinching the matter by saying: "His Majesty's Government would not budge an inch from their position even if you appeal to the Federal Court." Now, Sir, what is the position? If we go to the Federal Court and the Federal Court gives a decision in favour of the view taken by the Congress, the Muslim League has categorically stated that it would not accept it. His Majesty's Government say they would not budge an inch from their own view of the matter. Of course it is not within the jurisdiction of His Majesty's Government, in my opinion, to say whether they would accept the Federal Court's view or whether they would not, because it is entirely out of their hands. The Constituent Assembly makes the reference to the Federal Court and it is for the Constituent Assembly to say before it makes the reference that it will abide by the decision of the Federal Court. What will happen then? Assuming that the Federal Court's decision is in favour of the view taken by His Majesty's Government, what will be the position of those who have taken a contrary view? The only thing they can do in view of all the commitments they have made to individual Provinces and communities, is to move this Assembly for a modification of paragraph 19, which would more clearly express their view. The main difficulty is the method of voting in the Sections as the Secretary of States said in the House of Lords. If you leave paragraph 19 (v) as it is, it is certainly an arguable point that in the absence of any modification of the wording of that clause the voting must be by individuals and a simple majority would decide the question. It is certainly an arguable point. If we want that voting should be by provinces, it is necessary that we should propose a modification of that clause, and that modification can, I think, be done by this Assembly on a motion properly made. Now, are we going to do that? I suggest that, in view of what has come from His Majesty's Government both in the Statement of December the 6th and in the speeches made in the two Houses of Parliament—I suggest that, in the new circumstances that have been created, the wiser thing to do is not to send a reference to the Federal Court but to take the other course which I have indicated, namely, that you bring up a resolution in this Constituent Assembly proposing a modification of clause 19 (v) which will provide that the method of voting should be by provinces in the Sections so far as the grouping matter is concerned.

Mr. Dharendra Nath Datta: Please save us from such prayerful resolutions!

The Hon'ble Diwan Bahadur Sir N. Gopaldaswami Ayyangar: The Resolution I am suggesting is to be moved in this Assembly; we are to take a decision on it. It is quite possible—and I think it would be an arguable position—for the Muslim League representatives to come here and raise the question that such a modification involves a major communal issue. If you decide, Sir, it is a major communal issue, or, if after obtaining the advice of the Federal Court, you decide that it involves a major communal issue, it will be open to the Muslim League to contend that you cannot carry out that modification without a majority of each of the major communities. Why, I ask should we not take that step? We shall take that resolution into consideration at an adjourned sitting of this Assembly, even those who have not presented their credentials and signed the Register—the members of the Muslim League—that we shall consider and move a resolution of that sort. That must be a sufficient indication to them to come and occupy their places in this Assembly and defeat what they consider to be an unconscionable suggestion from the other side. That is one point I wish to suggest to those who may have to take a decision in this matter. Going to the Federal Court is absolutely useless, and so far as I can see, it will solve none of our troubles.

Then, on this main issue of adjournment, I do not propose to deal with the point of law that my Hon'ble Friend, Dr. Jayakar, took. I should like only to refer to some of the other criticisms that have been received. Before proceeding to that I should only like to suggest that, in considering points of interpretation of the document, namely, the Statement of May 16, let us not forget that we are not working under a provincial enactment or as members of a provincial legislature, of the Central Legislature working under a Statute of Parliament. We are in a Constituent Assembly, and whatever is not said in the document under which we have gathered here, is not prohibited to us. We have the residuary powers in full for accomplishing the task which we have undertaken. (*Hear, hear*). That being so, what I would suggest is that we should not rivet our eyes to particular clauses in this document and say, "this is not said in this particular clause, that is not said in the other clause, and therefore we cannot do anything which is not said in those clauses." I think whatever is not said but is necessary for the accomplishment of our task, is within our powers to regulate.

I will leave the rest of the objections to the consideration of this Resolution on the point of law to people who can deal with legal matters more efficiently than I can. I desire in the few minutes that still remain to me to deal only with the objections that have been raised on behalf of the States. There are mainly three objections that on behalf of the Chamber of Princes, have been made public. The first is that the Resolution is objectionable because it is proposed to be considered and passed in the absence of the States representatives. Well, Sir, that I have dealt with already. The second is to the use of the words "Independent Sovereign Republic". I do not propose to occupy your time in dealing with that matter as it has been dealt with already by other speakers. I should like to deal a little more fully with the third objection to clause (4) of this Resolution. This clause says :

"wherein all power and authority of the Sovereign Independent India, its constituent parts and organs of Government, are derived from the people."

Exception has been taken to this in a statement issued by a distinguished Indian who has a right, I think, to speak on behalf of the Rulers of Indian States, in any case, of some of them. He says:

"Such a doctrine may or may not be incontestable, but there is no point in taking it for granted in India, especially when we remember that in legal theory this doctrine is only imperfectly applicable even in England."

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I do not propose to undertake an examination of this doctrine in relation to legal theory. I would rather confine myself to its constitutional aspects. It is definitely incontestable that in spite of a hereditary monarch as head of the State from whom, in the forms of law, all authority is supposed to flow, the substance of real power and authority in England is derived from the people.

Now (what is the case in Indian States? I would only quote from two documents which have the authority of committees established in the two most important Indian States. The first is from Mysore and is from a document which was published nearly a quarter of a century ago. This is what is said in that Reforms Report:

“In such a polity, the head of the State, whether a hereditary ruler or an elected President, exercises, as representing the *people's sovereignty*, a double prerogative, namely, one, in the sphere of legislation, the prerogative of ratification including the veto, and secondly, in the sphere of executive government, the prerogative of creating and uncreating the organ of Government, namely, the Ministry. And both these prerogatives are exercised much more fully, really and substantially than by the constitutional head of a limited Monarchy under responsible government.”

Then, here is an extract from a Report of a Committee on Reforms in Hyderabad:

“The British Constitution has grown out of England's long history and is the result of centuries of strenuous struggle between its King and its Parliament. There, the two-part system, sustained by the spirit of compromise and the conception of the sovereignty of the people, has struck deep roots into the soil. The peculiarity, on the other hand, of the Indian States is this: The Head of the State represents the people directly in his own person and, his connection with them, therefore, is more natural and binding than that of any passing elected representatives. He is both the supreme head of the State and the embodiment of the people's sovereignty. Hence it is that, in such a polity the head of the State not merely retains the power to confirm or veto any piece of legislation, but also enjoys a special prerogative to make and unmake his executive or change the machinery of Government through which he meets the growing needs of his people.”

Those two views of where the sovereignty rests in Indian States tally. The hereditary ruler is supposed to embody in his person the sovereignty of the people, but, in actual fact, he has exercised the sovereign powers in disregard of the people's interest in several cases.

The Cabinet Mission stated that, on the conclusion of the labours of the Constituent Assembly and on the framing of a constitution for India. His Majesty's Government will recommend to Parliament, such action as may be necessary for the cession of sovereignty to the Indian people. Even under existing conditions, the Provinces of British India and Indian States have a common Centre which administers such subjects as, under any unitary or federal constitution for India as a whole, must stand ceded to the Centre. Broadly speaking, sovereign powers over India as a whole now vest in His Majesty subject to the provisions of the Government of India Act, 1935. Those powers are exercisable both over British India and over Indian States, though the quantum of those powers and the manner of their exercise differ in the two cases. The act of ceding sovereignty, that is transfer of the power which Britain now wields in this country will, therefore, relate to the whole of India. When the Cabinet Mission therefore spoke of cession to the people of India, they must be held to have included the people of Indian States also. (*Hear, hear.*) The Mission's

statement, therefore, that when British power is withdrawn, the States become independent, should be construed to mean that such sovereignty as His Majesty in fact exercises over Indian States will stand ceded back to the people of those States.

In this connection it is significant that paragraph 5 of the Memorandum on States, Treaties and Paramountcy Rights issued on 20th May, 1946, which deals with the extinction of paramountcy, speaks throughout only of the Indian States and not merely of their rulers. The rulers of States have, however, up to date, both claimed and exercised full internal sovereignty in their States subject only to the politically inescapable limits set by the paramountcy of the British Crown. The paramountcy of the British Crown really means suzerainty, in other words, the ultimate sovereignty of the British Crown in certain matters. In the assertion of this claim, the rulers have throughout ignored the idea of any sovereign powers vested in the people of the States. They have claimed to exercise both the ordinary legislative power and the constituent power within the sphere in which they claim sovereignty, and any constitutional powers which the people of certain States exercise through their representatives have been a matter of gift from the rulers to them.

Now, this feature of the relations between the ruler and the people in the States is absolutely inconsistent with the idea underlying the framing of a constitution by a Constituent Assembly consisting of representatives of the people in whom the constituent power is deemed to vest. When the cession of sovereignty from His Majesty to the Indian people takes place, the people of the States will, together with the people of what is now British India, be entitled to exercise sovereign powers in respect of the subjects assigned to an All-India Union Government. The exercise of the sovereign powers as regards the subjects vested in Provinces will be in the hands of the representatives of the Provinces in the case of the subjects retained by them and, by the people in the groups, if any, to whom any provincial subjects might have been assigned by the Provinces. This is fairly clear.

The Resolution that is now under consideration puts the Indian States on the same level in regard to the subjects not ceded by them to the Union Centre as the Provinces are in respect of provincial subjects; that is to say, it asserts that all the power and authority of Indian States as constituent parts of the sovereign independent India are derived as such from the people of the States as similar power and authority are in provinces derived from the people of the provinces. It would be extremely anomalous if the constituent power in Indian States is vested in respect of Union subjects in the people of the States, and, in respect to Unit subjects, in the rulers of the States. In the process of building up a new federal structure for India through this Constituent Assembly, it will be found necessary that written constitutions of such States as already have them deserve to be overhauled as in the case of Provinces, and that written constitutions should be newly framed for States which do not have them now. It is possible to defer this work and leave it over for subsequent accomplishment provision being made in the Union Constitution prescribing the steps to be taken and the procedure to be followed in this connection.

If the representatives of the States in the Constituent Assembly so desire, the Union Constitution should guarantee the territorial integrity of the States as they exist today, subject to any modifications of boundaries which might be effected later on according to prescribed procedure and with the consent of the people of the States and other areas affected. The

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constitution of a State settled by the people of the State in association with the ruler; might make provision for hereditary succession to the headship of the State in the dynasty which is in possession now of the State and the Union Constitution might contain a provision that, if the State's Constitution does say so, it will not be interfered with, though a stipulation would be necessary that, in the overhaul of an existing written constitution or in the framing of a new one in any particular State, the hereditary head of it should be, or in the quickest possible time in the future, should become, a constitutional monarch presiding over at executive responsible to a legislature, the members of which are democratically elected.

Now, Sir, I wish to refer to only one point in order to stress the need for the provision in clause 4 of the Resolution. The existing written constitutions of individual States almost invariably contain a section that all rights, authority and jurisdiction that appertain or are incidental to the government of the territories included in the States are vested in and exercisable by the Ruler, subject to the provisions of the constitution which is granted by the fiat of the Ruler himself. With a view to emphasising the unlimited nature of the sovereign powers claimed by the rulers, such constitutions contain also another provision which enacts that, notwithstanding anything contained in the Constitution Act or in any other Act, all powers, legislative, executive and judicial, are, and have always been, inherent and possessed and retained by the Ruler and that nothing contained in any such Act shall affect or be deemed to affect the right and prerogative of the Ruler to make laws and issue proclamations, orders and ordinances by virtue of his inherent authority. Such provisions in States constitutions are remnants of an all-pervasive autocracy and deserve to be swept away and replaced by a provision which declares that all powers of Government, legislative, executive and judicial, should be deemed to be derived from the people and exercised by such organs of State including the hereditary Ruler as may be designated in the written constitution and to the extent authorised by that constitution.

I am afraid, Sir, my time is over. I do not wish to take up any more time, but I hope I have tried to show how necessary it is that this inclusion of the States in clause 4 should remain in this Resolution. As a matter of fact, unless we get into this Assembly the representatives of the people of the States, they cannot really participate in the work of the Assembly and help in the making of a constitution for their own States as well as in the making of a Union Constitution.

Mr. Chairman: It is already quarter past one. The House is adjourned till Even of the Clock tomorrow morning.

The Assembly then adjourned till Eleven of the Clock on Thursday, the 19th December, 1946.
