

Friday, 29th August, 1947

Volume V



14-8-1947
to
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CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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CONSTITUENT ASSEMBLY OF INDIA

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THE HONOURABLE DR. RAJENDRA PRASAD.

Vice-President:

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Constitutional Adviser:

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Secretary:

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

Joint Secretary:

SHRI S.N. MUKERJEE.

Deputy Secretary:

SHRI JUGAL KISHORE KHANNA.

Under Secretary:

SHRI K.V. PADMANABHAN

Marshal:

SUBEDAR MAJOR HARBANS RAI JAIDKA.

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CONSTITUENT ASSEMBLY OF INDIA

Friday, the 29th August 1947

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

MEMBER TAKING PLEDGE

The following member took the pledge:

Lt.-Col. Brijraj Narain (Gwalior State)

ELECTION OF MEMBERS TO THE HOUSE COMMITTEE

Shri Satyanarayan Sinha (Bihar: General) : Sir, I beg to move the following motion:—

“Resolved that the Constituent Assembly do proceed to elect in the manner required under Rule 44 (2) of the Constituent Assembly Rules, two Members to be Members of the House Committee.”

As you know, Sir, two of our Members who were Members of this Committee, Mr. Abdul Ghaffar Khan and Mr. A. K. Das have ceased to be Members of the House. According to the Rules, they have ceased to be Members of the House Committee too. Therefore, there are, two vacancies to be filled in the manner prescribed by the Honourable the President.

The motion was adopted.

Mr. President: Nominations to the two vacancies in the House Committee will be received up to 5 pm. today, and elections, if necessary, will be held between 3 pm. and 4 pm. tomorrow in the Under Secretary's room (Room No. 25), Ground Floor, Council House, in accordance with the principle of proportional representation by means of the single transferable vote.

COMMITTEE TO SCRUTINISE DRAFT CONSTITUTION

Shri Satyanarayan Sinha: Sir, I beg to move—

“This Assembly resolves that a Committee consisting of—

- (1) Shri Alladi Krishnaswami Ayyar,
- (2) Shri N. Gopaldaswami Ayyangar,
- (3) The Honourable Dr. B. R. Ambedkar,
- (4) Shri K. M. Munshi,
- (5) Saiyid Mohd. Saadulla,
- (6) Sir B. L. Mitter,
- (7) Shri D. P. Khaitan,

[Shri Satyanarayan Sinha]

be appointed to scrutinise and to suggest necessary amendment to the draft Constitution of India prepared in the Office of the Assembly on the basis of the decisions taken in the Assembly.”

Sir, you will remember, last time when we were discussing the Union Constitution and also the Provincial Constitutions, on your suggestion, the House approved that a Drafting Committee should be appointed to give proper shape to the decisions which we have taken in this House. With that end in view, this Committee is going to be appointed. This is purely an expert committee. I hope the House will approve the names suggested.

Mr. H. V. Kamath (C. P. & Berar: General) : On a point of order, Mr. President, Saiyid Mohd. Saadulla, as you, are well aware was unseated as a result of the Sylhet Referendum and has been only recently re-elected. He has not yet signed the Roll of Members and taken his seat in this House. As such I think he is not eligible for election to any Committee. Will you, Sir, be so good as to tell the House whether, as far as Mr. Saadulla is concerned, the motion is in order?

Mr. President: He will begin to function after signing the Roll.

Begum Aizaz Rasul (United Provinces: Muslim) : Mr. President, though I have not given notice of this motion, I would like to move with your permission that this House gives the Honourable the President the power to nominate any other Member to this Committee, if any Member who has been nominated on it is not able to serve for any reason. I hope the House will kindly accept this amendment of mine and give this power to the Honourable the President.

Mr. President: Have you given notice of this amendment.?

Begum Aizaz Rasul: I said just now that I have not given formal notice of this motion, but that I hope the House will kindly accept my motion.

Mr. President: I shall consider this matter a little later. In the meantime the other amendments may be moved.

The Honourable Shri B. G. Kher (Bombay: General) : Mr. President, Sir, the amendment of which I have given notice is suggested with a view to express more clearly and give effect to the intention of the mover, Mr. Satyanarayan Sinha. It reads this way:

That for the words “to scrutinise and to suggest necessary amendments to the draft Constitution of India prepared in the Office of the Assembly on the basis of the decisions taken in the Assembly” the following be substituted:—

“to scrutinise the draft of the text of the Constitution of India prepared by the Constitutional Adviser giving effect to the decisions taken already in the Assembly and including all matters which are ancillary thereto or which have to be provided in such a Constitution, and to submit to the Assembly, for consideration the text of the draft Constitution as revised by the Committee.”

It makes provision for two things. One is that for the purpose of giving effect to the decisions taken already in the Assembly—the Constitutional Advisor will prepare the draft. That draft has to be scrutinised by this Committee. Then, Sir, we have not here considered all the points which are ancillary to the decisions which we have taken or which are usually necessary and have to be provided in the Constitution. For example, we have laid down a principle that all the action to be taken in the Provincial Constitution will be taken in the name of the

Governor. There are a number of things which have to be put in order to give effect to this decision which the Assembly has taken and which have been given a place in the Government of India Act. Then there are provisions which are ancillary in the other constitutions, and some other provisions which must usually find a place in the Constitution. All these will have to be included in our draft even though they may not have been discussed or decided here up to now. I do not think it proper to make any lengthy remarks on this amendment. It was not possible for us to discuss and provide for every necessary matter but without them the constitution will not be complete. We have taken decisions on almost all important points. Those will be given effect to but the draft will also contain things which are ancillary to these and also all such things as are otherwise necessary. The draft containing all these matters is bound to come up before the House for discussion and decision. I hope, Sir, this House will accept this amendment.

Mr. President: Those amendments which go to the merit of the resolution will first be considered.

Shri Satyanarayan Sinha: I accept the amendment, Sir.

Mr. A. P. Pattani (Western India States) : Mr. President, I wish to submit that the Motion that is being placed should be shortened and it might be just said that this Committee be appointed to assist the Constitutional Advisor in drafting the Constitution. I wonder whether it is necessary to entrust the task of drafting the constitution to a large Committee. It would be much better if the Constitutional Adviser who is the one experienced adviser is given the work, because all the details are only known to him. The draft cannot be made in sections but as a whole. Consequently those members of the Committee that are appointed will be of help to him in framing the Constitution, to draft it on the lines of the amendments that have been accepted in the House here. So instead of scrutinising, etc., it will better serve the purpose, if the House simply says that this Committee will assist the Constitutional Adviser in drafting the Constitution.

Shri M. Ananthasayanam Ayyangar (Madras: General) : Sir, I am not in favour of the suggestion just made by the previous speaker. It is not right that the work should be entrusted entirely to the office, however eminent the officers might be. We have now taken decisions on various matters that have been placed before us by way of the draft Constitution. It is up to us to appoint a Committee of the leading men to frame the Constitution. There are a number of things in which we have moved amendments to the draft that was placed before us, approved of other things which normally find a place in any Constitution and which are taken for granted and even in respect of lists we have to consider them. It is wrong to leave these Lists—whether they are good or bad—to the decision of the officer who has to frame it. We have been looking for guidance from time to time to many Honourable Members of this House. For instance, the Honourable the President many a time has asked Mr. Alladi Krishnaswami Ayyar what is his opinion and likewise various others have also contributed. They have got all the amendments that have been tabled. No doubt, the amendments have not been formally moved, but they will be taken into consideration. Therefore, I suggest that this Committee may introduce a draft bill which will be considered clause by clause later on by the Assembly.

[Shri M. Ananthasayanam Ayyangar]

I also agree in a way to the suggestion made by the Honourable Lady Member that in case anyone of the Members may not find it convenient to come and the work cannot wait, the power to fill in or co-opt such of the members who may find it convenient or who are prepared to shoulder this responsibility must be given to the President, Sir, if the House accepts, I would like to clothe the President with that power also. It is not for two or three members to meet and share the entire responsibility. For instance, Mr. Santhanam has been here taking a great interest in these matters. He continues to be in Delhi. These gentlemen may be requested to attend in case others do not find it convenient to appear. Therefore, with the modification of vesting the general power in the President, the amendment of Mr. Kher may be accepted.

Shri K. Santhanam (Madras: General) : I support the amendment of Mr. Kher, but I should also like to have some information upon a few important points. We have left certain material particulars undecided in this House so far. For instance, we have yet to decide upon the definition of citizenship, upon the procedure for change of constitution, upon the emergency powers and upon the financial clauses of the Constitution. Now, I would like to know whether this Committee is to begin work now or whether it is to wait till we have decided these matters in the next session. This should be made clear unless this Committee is to sit quiet and practically not function at all. I would myself suggest that the Committee should proceed to draft all the clauses. But they should keep the matters which have been already decided distinct. The other portions may be put in big types or italics so that when we meet here we may adopt a different procedure for the two parts. So far as the parts containing our decisions are concerned, only the verbal part of it will be scrutinised and no material amendments of principle will be adopted. As far as those parts which contain matters which are not decided are concerned, we shall proceed to table amendments on principle also. Therefore, I do not think this Committee need wait till we have decided the points which have not yet been decided.

Let them prepare a tentative draft and let the whole draft be brought before the next session. Let us then consider verbal amendments to those parts which have already been decided and in case of the other sections of the constitution which have to be considered *de novo*, we can table amendments of principle. Thus we can save the time of the House. Otherwise, another session to determine all these unsolved particulars will be a great strain on the Members. Therefore, I hope that when we meet in November, we will have a complete draft of the whole Bill including all matters which we have decided and other matters which we have yet to decide, so that we can adopt this procedure. I hope this will be acceptable. Mr Kher's amendment should be interpreted in the more liberal fashion that I have suggested.

Seth Govind Das (C. P. & Berar: General) : *[Mr. President, one very important matter has not yet been decided and in this connection I want to say what should be our language. You had said that the

*[English Translation of Hindustani speech begins.]

constitution, which we will draft, will originally be in our national language, and if it is deemed necessary it will be translated into English. I want to know in what language the committee that is being set up will transact its business. I want to know whether this matter will be considered by the Committee or not.

The other thing that I want to know is, as to whether the bill that we are drafting will be originally in our language, as you had said, or whether it will be in English. I want to suggest that these matters as well should be decided now, and also that the Bill that we are drafting should initially be in our national language. It can later be translated into English. What our national language should be, must also be decided just now.]*

Mr. M. S. Aney (Deccan States) : Mr. President, Sir, I have come to make some observations because my friend Mr. Santhanam has made a suggestion which appears to me to be unconstitutional. Mr. Santhanam has asked that the Drafting Committee work should be to prepare a draft showing those clauses which are based upon our decisions in some form to be distinguishable from the rest of the clauses. He further stated that those clauses which are based upon the decisions already taken here should admit only of verbal amendments here and there; and any substantial amendment to modify those clauses should not be permissible. I submit, Sir, that the right of the House cannot be restricted in that way. (*Hear, hear*). It is one thing when you take the decision now. When the whole draft of the Bill is before you, in the light of that, it may become necessary for you even to go back upon certain decisions that you have taken before. No hard and fast restriction is, in my opinion, desirable. I have come here mainly to emphasize this particular thing.

Secondly, a suggestion has been made that it should be open to the President to nominate anybody he likes in addition to the names on the list. Ordinarily, nobody will take any objection to this. The main reason why we have thought of giving certain names is to relieve the President of his invidious responsibility in a matter of this kind. It will be putting him in an awkward position if ten persons go and tell him, "I think I am very competent to deal with the matter and so my name should be there". It is better that the names that are given in the list are adopted. It is not necessary for anybody to be on the committee itself to assist the members by making suggestions.

Therefore I oppose the particular suggestion which has been made by the lady who spoke and who was supported by my Honourable friend Mr. Ananthasayanam Ayyangar.

Mr. R. K. Sidhwa (C. P. Berar: General) : Mr. President, as I have understood, the object of this Committee is to proceed immediately with the business that has been adopted by this House. That is to say, all the proposals that this House has considered as far as the Union and Provincial constitutions are concerned, will be duly framed, excepting those subjects, namely language, citizenship and the principles of the first part which are to be held over. The Committee cannot discuss these matter until these and other subjects which are not yet

] * English Translation of Hindustani speech ends.

[Mr. R.K. Sidhwa]

decided by this House have been discussed threadbare again in the next session. But that would not prevent the Committee from proceeding with its business. Mr. Santhanam's apprehension therefore is not tenable. The object of this Committee is to proceed immediately with its business and therefore, I feel, Sir, there is no necessity for Mr. Santhanam to be apprehensive.

Secondly, as Mr. Pattani has suggested, I do feel that the constitution could be prepared by one expert gentleman. Personally, I would have felt a Committee of three persons to scrutinise it would be enough. As it is stated that some members may be absent, seven names are suggested. I am not in favour of asking the President to fill in names for those persons who are absent. Three even would be sufficient; five would be more than that and seven much more. Therefore, I feel that as proposed by Mr. Kher and Mr. Santhanam, the names which are there should be allowed to stand without giving power to the President to take any more in the event of a vacancy for persons who are absent, and that the proposal as made by Mr. Kher with the names that have been proposed should be accepted.

Dr. D. Pattabhi Sitaramayya (Madras: General): Mr. President, Sir, we cannot read into the resolution more than the wording permits and therefore I am not perturbed by what Mr. Santhanam has suggested. As a practical politician, he expects that the Bill to be ready must be complete and cannot be full in certain parts and absolutely blank in other parts, and so he thinks that the Bill should be a complete one. When it is made a complete one, his suggestion comes into operation. Whether there is to be a complete Bill and his suggestion should be permitted to come into operation is the issue that we have to consider. If that is to be accepted, then it will be taking away the powers of the whole House and constituting the Sub-Committee into a kind of Committee Delegate of the Constituent Assembly, a step that is not desirable by any means. As Mr. Santhanam has himself categorically described the first three Chapters of the Union Constitution Committee and the last two bits of the same, as well as the Provincial and concurrent and a good half of the Federal lists of the Union Powers Committee constitute a big chunk which has been left out and has yet to be considered by the whole House. For instance, the Union Constitution Committee and the Model Provincial Constitution Committee had a joint sitting and appointed a Sub-Committee in regard to linguistic provinces and its recommendation has been considered by the Joint Committee of the two Committees. What is to happen to that hereafter? Should it be dangling in the air like Trisanku, neither in heaven nor on earth? Should it be given the go-by? Should it be passed over? I mention it only as an example, not that I am a faddist about the question. The matter has to be taken as an illustration. I ask; "When on November 6th, this Assembly reassembles, for what purpose is it going to reassemble? Is it going to be presented with a Bill, complete in every detail, and then consider it as a matter of course?" In that case, it will have embodied in it portions which have not been considered at all by this House even primarily. If that is not so, then, the November 6th Session will have to address itself to a consideration of the left-over points in which case no Bill can be ready by that time. This is the difficulty that presents itself to me logically. Therefore, I would like the President to make the position clear and also if possible to convene a Session of this House in the month of September or October in order to complete all the points which have been left unconsidered. Then the material that

will be presented to the draftsmen or the drafting Committee or the scrutinising Committee will be ample and complete and then only they can deal with the matter. I make this suggestion in order to have in our mind a clear idea as to what is going to happen and if possible to persuade the President to convene a session in the month of September or October for completing the business by attending to those other matters which have been left over.

Pandit Lakshmi Kanta Maitra (West Bengal: General) : Mr. President, the amendment moved by my Honourable friend Mr. Kher deserves very careful consideration and in that connection the observations that have been made by Mr. Santhanam should also be closely scrutinized. I am sure that most of the members of this House have not yet got any clear picture as to what is going to be done in the next session. Mr. Santhanam says that a portion of the Union Powers Committee's Report has not yet been dealt with by the House. Nobody knows whether the House is in a position to accept it *in toto* or to modify it. He seemed to suggest that there will be drafting of the decisions that have already been taken by the House and that it would be open to the members to make certain small verbal alterations only if necessary. I want to tell this House that this is not an ordinary piece of legislation or an *ad hoc* piece of legislation which a legislature is called upon to enact. You are going to enact a Constitution Act for Free India and, therefore, it is incumbent, nay, it is imperative on everyone of you to scrutinise closely every single provision in the Constitution Act and to satisfy yourself that it meets with the requirements of the nation. If you simply restrain the powers of the members of this House and restrict them to mere verbal alterations. I think you will be doing the greatest possible injustice to this house and also to the country. It may be that when a full picture is presented to the House they may be constrained to make certain drastic modifications of certain portions of clauses of the Constitution Bill in the light of the decisions that we may be able to take mean-time. How can you say beforehand that, the draft that will come up before you would be only amenable to certain formal or verbal alterations? Does Mr. Santhanam 'seriously suggest that because we have accepted certain principles in this House in connection with the reports of the Union Powers Committee and the other Committees, therefore, that will operate as a *res judicata*, that they cannot be reopened, that it is, not open to any member to go back on them or to modify them to suit the necessity of the law itself or the constitutions itself so that it might fit in with the rest of the provisions? If that is the view held by him, I will join a straight issue with him. I cannot too strongly emphasise the point that it is the Constitution Act of this country which you are going to frame.

Then, Sir, I thoroughly agree with my Honourable friend Mr. Kher when he said that the drafting should be entrusted to certain responsible persons and that too many cooks would spoil the whole broth, and that these responsible persons should be entrusted with the specific duty of seeing that The decisions that have been taken so far are really embodied in the Bill with such alterations as may have been suggested. I want to ask you, Mr. President, to indicate to us whether or not, when the draft bill is prepared and formally introduced in the House for consideration, you are going to allow a Select Committee of this House, elected by members of this House, representing it all sections (and 'by all sections' I mean also the States) to go into and examine the whole Bill that is presented for the consideration of the House. Unless in my opinion, a

[Pandit Lakshmi Kanta Maitra]

Select Committee is appointed to go into the whole question to examine the bill with meticulous care in respect of every single provision of the Constitution Act, I am sure we are not going to get satisfactory results. Let us not forget that once a Constitution Act is passed, it is not changed within three, or six months or even within a year and a half. Therefore, we must take every possible care and precaution so as to make it as faultless as is humanly possible. No human institution is perfect, I know. But we must take all possible care to see that the Constitution Act framed by us is nearly faultless as possible. We will defer our judgment for some time until we are satisfied with all provisions of the Constitution Act. Therefore before we put the final imprimatur or seal of approval on the Constitution of India, I ask you carefully to consider whether you will not insist that on the presentation of the Bill there should be a Select Committee to examine the whole Bill and all its provisions with the utmost care and caution and then when the report of the Select Committee is presented before the House, you should have the final opportunity of carefully discussing every single section of the Bill. Personally speaking, I do not feel that we need proceed with the drafting of the constitution at the terrific speed now when we are going to introduce rules and regulations by which this Constituent Assembly will also be functioning as a Legislature. While functioning as a legislature this House can carefully examine the provisions of the Constitution Act as well. With regard to the portions that have been left out, I would suggest that if it is insisted that a complete draft should be presented to this House by the November Session, then the draftsmen may proceed on the assumption that the portions of the report of the Union Powers Committee that have not been so far discussed by this House or left over, have the approval of the House. If, however, we find that these recommendations in the report of the Union Powers Committee will not ultimately meet with the approval of the House, then we will modify them, and if the principles are not later accepted, the draft also will be modified accordingly. Therefore I do not agree with my Honourable friend Dr. Pattabhi Sitaramayya that an intermediate session would be necessary to complete the programme that was placed before us. I do not think it will be possible in the whole of September to convoke another session of the Assembly to go into this matter. I must say that the November Session should first of all discuss the portions that have been left out and which can be pieced together towards the end. The draft can follow. We shall expect the draft of the Bill in three month's time. After all the constitution of a country is not a small matter and cannot be lightly treated. I would therefore request that you, Sir, should give a clear indication to the House as to how we want to proceed. So far as I am concerned, I do not know if I am voicing the feelings of my Honourable friends here, but I am inclined to think that the final draft of the constitution should be in the hands of Honourable Members of the Constituent Assembly for at least three weeks before it is taken up. Unless you give them sufficient time carefully to read and scrutinise the provisions that you make in the draft, you will be simply taking a terrible lot of time here. You cannot stop the flood gates of amendments that would be pouring in from all directions, if you give them insufficient time. I do not think that for the scrutiny of the draft constitution of the country three weeks' time is too much. I mean that the draft will be prepared and circulated to the members at least three weeks in advance of the session. If you can do that, then the Honourable Members would come prepared thoroughly, and the amendments that may be tabled in connection with the different clauses probably will not be so numerous as they would otherwise be, if the Bill

is drafted in haste and if the draft is circulated to the members only a few days before the session commences. This is a very important matter. Sir, I do not mean to cast any reflection on your office, Mr. President, but from our experience of the Central Legislative Assembly Department, I may say that your secretariat is not half as efficient as that of the Central Legislative Assembly. That is what we find from the way in which papers,—daily order papers, are circulated to us. On the question of the supply of the draft constitution, if we are confronted with excuses such as “shortness of time” or “we sent to your address” or “we could not send it” and so on and so forth, that will be disastrous. Therefore I would say that it is very necessary to see that these drafts are sent to us in time.

Then, Sir, I would submit that it will be for you to take counsel with the other important members of this House and consider whether you envisage the appointment of a Select Committee to go into the whole Bill before it is taken up clause by clause by this House. Unless that is done we may not be able to safeguard ourselves against pitfalls.

Mr. Alladi Krishnaswami Ayyar (Madras: General) : Sir, on a matter like this it is as well we are sure as to what exactly the import of the resolution is. One thing must be made quite clear, namely, that in regard to the decisions already reached, they will be treated as binding, though if errors are discovered or unforeseen difficulties arise, it will always be open to the House to review the decisions. The analogy of a Select Committee in the case of an ordinary bill that is introduced by Government is misleading. We have taken nearly a year for the consideration of various subjects by certain committees of the House. There has been a Fundamental Rights Committee, the Union Powers Committee, and the Union Constitution Committee and they have considered and placed their decisions before this House. In regard to matters which have already been considered by this Assembly and in regard to which decisions have been reached, the scope of review at a later stage must naturally be limited. The analogy of an ordinary Bill introduced by Government without reference to the Assembly is misleading. There the Government Department prepares a Bill without reference to the legislature and places the Bill before the legislature. Then the House appoints a Select Committee which goes into the question. If you treat the whole question as a draft without reference to the decisions already reached on various important matters and if clause after clause were taken and discussed, I think it will be like beginning again. There will always be a beginning to the procedure, never an end of the procedure started in this House. I think it is as well that it is made clear that in regard to matters in respect of which no decisions have been reached they stand on a different footing.

But difficulty arises on account of my friend Mr. Santhanam’s suggestion that this committee must take into account the other set of provisions in regard to which no decision has been reached. I do not say that it is not open to the House to review the entire decision but there must be some degree of finality in regard to the work already done for about eight or nine months, so that we do not begin again as if it is the case of an ordinary Bill placed before a Select Committee ignoring the reports that have been submitted by the committees, the discussions of this Assembly on clause after clause and the votes that have been taken on the floor of the House. I do not know whether it is the wish of the House that this Committee should consider all matters. Sections which have not become the subject of decisions by this House is another matter. At any rate, some distinction must be drawn between cases in which decisions have

[Mr. Alladi Krishnaswami Ayyar]

been reached in this House yesterday, the day before and during the whole of the various sessions of this House. We have discussed clause after clause and there have been very long and elaborate arguments on the floor of the House. We owe a duty to the public, to make them feel that all this time is not to be treated as waste of time. That is the only point I want to make clear.

Dr. P. S. Deshmukh (C. P. & Berar: General) : Mr. President, Sir, I am sorry I cannot find my way to agree with the suggestion and the speech made by Mr. Alladi Krishnaswami Ayyar, or Ayyangar—I am afraid I am not able to pronounce his long name correctly, but whether it is Ayyar or Ayyangar, probably it makes no difference. In any case, he can be fittingly described as the previous speaker. His suggestion, Sir, is that the time that we have spent in this House should not be wasted. But this is, Sir, the important legislation which could never be altered lightly, and whatever procedure we may lay down in the House, it is bound to be very hard to amend it. We will have also to take into account the fact that many of our friends have already made up their minds that we are going to have a very large number of representatives coming from the States. We all know that the States are a conservative element in India and they are sure to put in their weight against any alterations. It is absolutely certain that if we try to amend the constitution, they would be on the side of maintaining it rather than permit it to be altered.

Apart from that Sir, what is the exact situation in which we find ourselves today? Sir, Alladi or Mr. Alladi said that we have spent a year on this work. I am afraid, Sir, that is not strictly correct. For the first time we met in the month of December. What was the business that was transacted then? Very little. The sum-total of the work we turned out in that session does not come to much especially from the point of view of being of much practical use. Then we met again in January, but that also was a very short session. We merely passed a resolution giving out the objectives of this Assembly. As a matter of fact, if we carefully look into the proceedings and records of our work, we will find that the work that we have done so far, is in my humble view, of a very perfunctory nature. We have had several committees, but in most cases we have had only interim reports, provisional suggestions, tentative proposals and things of that sort. That is the sort of thing we have been dealing with. We have not yet had a complete picture of the Constitution. As a matter of fact, the most important chapters in the Union Powers Committee are yet to be decided on. Then, how can we possibly say that we have before us a skeleton of the constitution? I say there is not even a skeleton constitution before us. Therefore, it is but proper that we should have a very comprehensive committee a committee got up of members from all sides of this House containing the best intellect and competence that we have in this House to look to the shaping of the Constitution. Not to give such an opportunity and to rush legislation like the framing of a Constitution would be highly improper. I hope, Sir, that the suggestion made by Mr. Santhanam and supported by Mr. Alladi Krishnaswami Ayyar will not be accepted by this House and that the counter-suggestion made by other friends of mine and supported by Mr. Aney on this side will be accepted by the House.

As I said before, we have been dealing with the Constitution in a very piece-meal manner and unless we have the whole picture before

us, the House should not be regarded as having committed itself one way or the other. Of course, in some matters, as in the case of the Minority Committee report, etc., there was so much of unanimity that the decisions arrived at are not likely to be disturbed. But there are so many ancillary things, and things that arise as sort of corollaries to the main propositions. It is fit and proper that they should be decided afresh. It should not be supposed that the decisions that we have already taken in respect of these are unalterable. They should be alterable with as much ease as possible till we have the whole picture and till we have had a proper opportunity of discussing every word, every section and every principle involved in the Constitution. Till such time none of our decisions should be regarded as in any way unalterable.

Mr. Tajamul Hussain (Bihar: Muslim) : Sir, I rise to oppose the motion of Mr. Satyanarayan Sinha. In my opinion it will be wrong to appoint a committee at this stage. I do not believe in doing work piecemeal. I think it is far better in our own interests that we sit here till we have finished the consideration of all the Reports. I think it will not take more than about a fortnight to finish the consideration of the Reports. If we continue the work now, I think, that by the 12th of September we will be able to finish it. If Government, for certain reasons, are not prepared to do so, being busy elsewhere—let us adjourn for a few days and meet again. But let us not end this session, now. Let us adjourn for a few days, meet again and finish the work which we have taken on hand. When all the Reports are finished let us then appoint a Committee, and then adjourn for about three months. I think it will take the Committee about two months to scrutinise the whole thing and submit its report in the form of a Bill. And then we will take at least one month to consider the Bill and then we can come to the Assembly to deal with that Bill. Therefore, I say, let us go on till the end or at least till the middle of September and finish consideration of these Reports. Suppose we go to the end of September, we can adjourn for October, November and December, and meet again in January and then go on till we finish this work. I think if we sit for two months during, January and February, then by the end of February we shall finish the work. For the three months we can stay here as the Members of the Union Parliament. During these three months, part of the time can be spent in this way. Then we can sit from the beginning of March to end of March or middle of April for the Budget Session of the Central Legislature. I think, Sir, for the smooth working it would be better that we continue now, and appoint a committee after the entire work of considering the Reports is finished. I have come here to oppose the original motion of Mr. Satyanarayan Sinha.

Mahboob Ali Baig Sahib Bahadur (Madras: Muslim) Mr. President, Sir the process of constitution-making has been going on for the last eight or nine months. This Assembly appointed certain committees to go into several topics, and to recommend a constitution for the Province and for the Centre, and some committee were appointed to make reports on special subjects such as the Powers of the Union, the Minorities Rights, the Fundamental Rights and so on. After these committees had gone into the several matters referred to them, and after great care and scrutiny, they made their reports to this Assembly. Most part of the reports has been discussed and debated upon in this

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Assembly, and this Assembly came to certain conclusions, and decided certain matters this way or that. So we have reached a certain stage now. After the committees had studied the questions and prepared their reports, these reports were discussed and debated in this Assembly and most of these questions have been decided upon and only a few topics have been left over. Now, two questions arise. The first is, whether a select committee to draft the Constitution should be selected now, or whether it should be selected after the remaining topics also have been decided upon by this august House. That is the first question to be decided. The second question is whether the decisions that have been taken by this House can be re-opened again at the stage when the draft Bill comes before it. These are the two questions to be decided on this motion. I am clearly of the opinion that there is no room, nor justification for reopening the decisions on those topics that have already been decided upon. As my friend Mr. Alladi Krishnaswami Ayyar put it they have been debated upon, they were scrutinised on reports drawn up by committees competent to consider them. They were again thrashed threadbare and debated upon by this body. Therefore, Sir I think no useful purpose would be served by reopening then again at this stage, nor is it right and proper.

Shri C. Subramanyam (Madras: General) : Sir, on a point of order Rule 32 of the Rules of Procedure is as follows:—

‘No question which has once been decided by the Assembly shall be re-opened except with the consent of at least one-fourth of the members present and voting.’

Therefore, it is clear that we have provided for the reopening of questions already decided upon. That being the case. I want to know why there should be any debate on this point at all. We have already provided for the reopening of decisions. So I submit there need not be any debate regarding the reopening of decisions once arrived at.

Mr. President: You should have raised this point of order when the first speaker raised the question. Now that the debate has proceeded so far it cannot be stopped in the middle. But all the same, I think this question has been discussed at great length and I would request Honourable Member to cut short their remarks as much as possible.

Mahboob Ali Baig Sahib Bahadur: The second question is about the select committee for drafting the Bill. I entirely agree with my friend Dr. Pattabhi Sitaramayya that the topics left over should also be debated upon, discussed and scrutinised by this House and when we have done that, then that will be the time to appoint this drafting committee. I do not see any reason why certain topics which have been left over should not be discussed by this Body. Is it considered that the topics left over are not of as much importance as the others? It is clearly not so. One Member has said that after the Bill is presented to the House it should go to a select committee. I do not think that is necessary at all after this larger body, the whole Assembly, had once gone into the whole question and decided on the issues one way or the other. Therefore there is no necessity for a select committee to be appointed before, which the Draft Bill should go and I submit that just as we have decided on many topics the remaining topics also should

be decided by this body so that what is left to the Drafting Committee will be only placing the topics that have been decided on, on which decisions have been arrived at, in a legal form and providing any consequential provisions that may be necessary from those decisions That is all. When the draft Bill comes before the House it should be very much easier for us to get through the business and pass it in a shorter time than would be necessary if we were to go through it *in extenso*. Therefore, I submit that it is not open to us, at any rate, normally, to reopen the question at the time the draft is placed before us. At the same time I am of opinion that this House should decide, as it had decided other topics beforehand, regarding matters that had not been decided and it is not necessary for us at this stage to appoint a Committee.

Shri Raj Krushna Bose (Orissa: General) : Mr, President, I do not have to say much in this connection. In my opinion it would have been proper if we had maintained continuity and consistency in the proceedings hitherto. From the discussion today it appears that we are deviating from the course which we were following. As first, we had thought of determining the principles for drafting of the constitution. You set up two committees and they have settled the principles. When principles have once been decided, it would have been proper for us to express our opinion on them. This could not be done, because the present session finishes before the 31st of August. Therefore, I desire that hence forward, whenever we are summoned we should have clear indications as to how many days we would be required to stay. We do not get any indications in this connection and we come on the understanding that after finishing the work of the Assembly in a few days we will be able to go back to our respective constituencies. But in future, we should have clear indications as to how long approximately the session will continue so that the members may not say that they are not prepared to stay so long. I want to submit most respectfully that we should have liked to express our opinion on the principles which the two Committees have agreed upon after so much labour and hard work. To do otherwise is a mistake and I think that we are not doing our duty. When you have decided that we shall not sit after 31st, then I submit that for expressing our opinion on the Union Constitutional principles on which we have not yet given our opinion, another session should be summoned either towards the end of September or the beginning of October. After that, the draft should be prepared which we will pass of course. If there is some mistake of language we will correct it. When the draft comes before us we can amend it if necessary, but we have no right to go against the basic principles. Then we will not be able to say that the Governor should be elected on the basis of indirect election instead of adult franchise. If we go on changing the principles like this, then the task of the Constituent Assembly becomes very difficult, and the work will never come to an end. Therefore, I submit very respectfully that consistency should be maintained with what has so far been accomplished, and in order to ascertain opinion regarding the remaining principles of the Union and Provincial Constitutions, another session should be summoned either at the end of September or the beginning of October. After that, we will give time to the Constitutional Adviser to prepare the draft, and when the completed draft comes before us, we will give our final opinion. Therefore, it is essential that continuity be maintained.

As I have already said, from now onwards when the Constituent Assembly is summoned an indication should be given that we will have

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to stay here for approximately so many days. The members will therefore not form their own idea that the work will be finished in so much time and make their arrangements accordingly. On the contrary, they will make their programme on the basis of your directions and then these difficulties will not arise.

Mr. Jaipal Singh (Bihar: General) : Mr. president, Sir, I oppose the Resolution that has been moved because I feel that it is not right for us, at this stage, to appoint any Committee, whether of experts or otherwise, which can pry into things which we have not yet decided. I can fully understand that decisions that have been made may be put into the melting pot by them and turned out in constitutional language, but it has been insinuated by some, speakers that this Committee would also look into matters where the House has not taken its decision. A great many important subjects are yet left over. They have not been decided by this Assembly and I don't see how we can delegate our constitution making power to any Committee at all. I do not think there can be any difference of opinion on that. I do admit that, as far as the question of clauses and other things that have already been decided by us, is concerned, a Committee may reproduce them in suitable constitutional language. Here, a point has been raised that some sort of finality should be reached. True we are making a constitution and that very word itself means that we are not to change it every five minutes, but at the same time, before finality is reached, I think we should have ample opportunity of reviewing the situation. It may be that we shall have to unmake our decisions. The House is a sovereign body and it has the right to make decisions and unmake them. It seems to me that, by appointing a Committee at this stage, we are putting the cart before the horse. More and more have we realised that it does not pay us to rush things. We have appointed Committees of experts; they have produced their reports; and what has happened is that those reports when they have appeared before this Assembly have been thrashed out and there have been very many important changes in the recommendations of the experts. This may be the case with the Drafting Committee also when it submits its report. I think, in that case, we shall just be wasting time. I think the better thing would be that we should complete whatever remains to be done and, then, the Drafting Committee will be in a position, having been in full possession of all decisions taken by this Assembly to produce a Bill which can come before us to make up our mind finally whether we want to change the language or the subject matter contained in that Bill. Sir, I particularly feel that it should not be left to this Committee even to draft in constitutional language clauses in regard to tribal matters, for instance. Now, the Tribal Committee, one of the Sub-Committees appointed by the Advisory Committee which again has been appointed by this Assembly, has yet to complete its work. We have, I know, submitted an *interim* report. Does it mean that this Committee of experts, expert draftsmen, are going to submit in the Bill matters which have not yet come before the Assembly? I think, that would be a preposterous thing for us to do. The House must have the right to make its decisions and I suggest that we can never delegate our constitutional power to any Committee, however great the experts might be. We have seen their we are grateful for the work they have produced, but our experience has been that even experts have to be shifted when the matter they produce comes before the floor of the House.

Mr. Hussain Imam (Bihar: Muslim) : Mr. President. I do not wish to take up the time of the House. I simply wish to point out the conditions under which we are working. At the moment there is so much distress and disturbance in the country that it seems unnatural for us to sit here, and not be at our posts. A suggestion was made that this Session should be continued. I think it would be disastrous for this Session to be continued for a day longer than is absolutely necessary. We must terminate the Session as soon as possible and go back and give the message of peace to the countryside. It is our duty as citizens of India to see that peace is restored. The motion by Mr. Satyanarayan Sinha is very simple and I do not understand why there has been so much distrust shown by Honourable Members. Let us examine this in a cool way. An Assembly of this nature cannot possibly go into and examine the things in detail. Everywhere the detailed scrutiny is left to Select Committees. Here, too, we had the advantage of double scrutiny. Firstly, you had the Union Powers Committee and then the Union Constitution Committee. These two have gone into the matter, sifted the whole thing and framed their recommendations. They have then been examined by the House. But let me tell the House, that no doubt there have been a large number of amendments moved, but the amendments that have been carried have been mostly inspired amendments and the Committee that has been proposed consists of experts whose opinions have prevailed in this House. You have the guarantee that after the double scrutiny there will be a third scrutiny by the experts. Now there is no question of usurpation of the rights of the House. The House being a sovereign body, has the right to change everything which it has not approved in the first instance. Only those are sacred which have been approved by the House, and after the approval of the House, you, as a sovereign body, respect yourself and impose a self-denying restraint and do not go back on your own decision. Therefore if any item is brought in which has not been approved of by the House, it will be open to the House to examine and reconsider and change. No one can deny the right of the House to amend those proposals which have not been approved in principle but this is what I want the House to realize. We are talking in riddles. We are really different parties and decisions are taken therein. No matter whatever people might say but it is only if the majority of the party feel that an amendment should be approved, then only it will be put as a party question and even those who were against it will vote for it. This is the reality of the situation. Therefore it is idle to say that suggestions have a better chance of being carried here if the Committee is not formed. Whether the Committee is formed or not, the party machine will move and as such only the inspired amendments which can have the approval of the machine of the party can get through. I therefore suggest that it is idle to make objections to the procedure. The procedure is quite all right. You have appointed the best people available to examine the draft put up by the office and it will not be difficult to go back on those recommendations of this Committee which have not been specifically approved by the House. I therefore feel, Sir, that this motion should be approved unanimously by the House.

Shri Shanker Dattatraya Deo (Bombay : General) : Sir, I move closure.

Mr. President: Closure is moved. I put it to the House.

The motion was adopted.

Mr. President: Mr. Satyanarayan Sinha may reply.

Shri Ramnath Goenka (Madras: General) : Certain amendments have not been moved.

Mr. President: I shall take up the amendments later. I am taking at the present moment the amendment relating to the text of the Resolution.

Mr. Satyanarayan Sinha: Sir, I confess I have not been able to appreciate the misgivings and doubts expressed by many of my friends here. I think the Drafting Committee's Report will be before this House and this House has got an inherent right to alter, modify and change anything it likes. I think the Assembly has the right to change even the decisions it has taken but it will not be fair if it goes on changing the decision which it has once taken and therefore I think the House will not agree to change the decisions on important principles which were discussed and decisions arrived at. But with regard to those principles which might be incorporated in drafting the whole bill on which we have not expressed our opinion or taken any decision, to that extent I think this House has every right to modify, change and alter. I don't see any reason for any fuss. The Committee's report will be before this House and it will have every opportunity to change or modify anything it likes.

Mr. President: I think it is necessary for me to make the position clear before I put the Resolution to vote. I do not think there is any intention of taking away any of the powers of the Members of this House and even if there were any such intention, that intention can have no effect. The idea is to place before the House at its next Session a draft in a more or less complete form so that the Members may be in a position to give their attention to the draft as a whole and then come to their conclusions and pass the draft section by section. We have already discussed and adopted the principles underlying some of the most important items and there are some about which we have not yet had any discussion. The idea is that the Committee which is now being suggested should have the draft ready, not only of the principles which have already been accepted, but also of those which we have not considered. Of course both will be before the House but they will be on a somewhat different footing. Those relating to the portions which have already been accepted will be considered by the House from one angle of vision. The House will ordinarily try to conform to its previous decisions and not to alter them unless it finds that there is something which calls for a revision. But with regard to the items which we have not yet discussed, the House will naturally scrutinise the draft with a greater degree of latitude or freedom and I think that will be the best course to save time, so that the House may consider the whole thing and may have an opportunity of forming a comprehensive view of the constitution as it emerges. I have this to say, that I am anxious that the Constitution should be completed; but at the same time I am equally anxious that we should do nothing in a hurry and that every clause, every sentence of a clause and every word of the clause will be weighed and carefully weighed by all the members before it is finally adopted. (*Hear, hear.*) Therefore when the draft comes up before 'in its final form for consideration, we shall take as much time as is considered necessary for giving it the fullest possible consideration and the members will have an opportunity of considering every word that is used there and of giving their own decision on the draft. I think with

that the members will be pleased to accept this resolution in the amended form which gives the Committee a somewhat larger latitude in preparing the draft in regard to matters which do not come exactly under the principles which we have decided but which are implied in them. I now put the amendment of Mr. Kher to the House.

An Honourable Member: What about your announcement that the Bill will be in Hindi or in the National language?

Mr. President: We will have it in Hindi. When the time comes. I shall place it before you.

Another Honourable Member: How many weeks will you give us to study the Bill?

Mr. President: Reasonable time would be two to three weeks. I will now put the amendment of Mr. B. G. Kher to vote.

The question is:

“That for the words ‘to scrutinise and to suggest necessary amendments to the draft Constitution of India prepared in the Office of the Assembly on the basis of the decision taken into the Assembly’ the following be substituted:—

‘to scrutinise the draft of the text of the Constitution of India prepared by the Constitutional Adviser giving effect to the decisions taken already in the Assembly and including all matters which are ancillary thereto or which have to be provided in such a Constitution, and to submit to the Assembly for consideration the text of the draft Constitution as revised by the Committee.’”

The motion was adopted.

Mr. President: I now put the resolution, as amended to vote.

The motion was adopted.

Mr. President: Now, with regard to the names of the Members who are to constitute the Committee I find that there are several amendments.

Honourable Members: We are not moving the amendments.

Dr. P. S. Deshmukh: I request all friends, who have given notice of amendments, adding my name to the list of names already suggested, kindly not to move their amendments. I am most thankful to them for their kindness in proposing me as a member of the Drafting Committee.

Mr. President: So then we have dispersed of the amendments to include new names to the list.

There is one suggestion made by Begum Aizaz Rasul and that is that in case any of the Members are unable to attend the Committee or if any vacancy occurs I should be given power to fill it. I take it that that suggestion was made in view of the fact that Mr. Saadulla is unfortunately not keeping fit and may not be able to serve on the Committee. I take it that the House will give me leave to fill up the vacancy if it actually occurs. (*Members:* “Yes”)

[Mr. President]

The question is:

“That original list of names suggested in the Resolution moved by Mr. Satyanarayan Sinha be adopted.”

The motion was adopted.

REPORT OF THE CONSTITUENT ASSEMBLY FUNCTIONS
COMMITTEE

The Honourable Dr. B. R. Ambedkar (Bombay: General) : Mr. President, I beg to move that this Assembly do proceed to take into consideration the Report on the functions of the Constituent Assembly under the Indian Independence Act, 1947, submitted by the Committee appointed by the President in pursuance of the decisions of the Assembly on the 20th August 1947.

Sir, the Report of the Committee has already been circulated to the Members of the House and, I do not think that, at this stage, when the Report has been in the hands of the Members at least for the last two days, I need expatiate at great length upon the work of this Committee. I think it would be enough if I, in the first instance, draw attention to the recommendations of the Committee.

All together the Committee has made five recommendations. Its first recommendation is that it is open to the Constituent Assembly to function as Legislature and that it should function as such; (2) that while functioning as Legislature it should adopt the rules of the Legislative Assembly as far as possible with necessary amendments; (3) the necessary amendments should be made under the orders of the President of the Constituent Assembly; (4) the work of the Constituent Assembly as a Constitution-making body and as an ordinary legislature should be separated and should be conducted in separate sessions to be held on separate days; (5) the power of prorogation should vest in the President and not in the Governor-General as found in the Adaptation of the Government of India Act. After having made these recommendations, the Committee considered whether there were any difficulties which would stand in the way of giving effect to their recommendations and found three which they had to resolve in order to give effect to their recommendations.

The first was whether one and the same person should preside over both the bodies, the Constituent Assembly and the Legislature. This difficulty arose because section 22 of the Government of India Act, which related to the office of the Speaker, has been dropped by the Adaptations which have been carried out under the Indian Independence Act with the result that the President is the one person who has to preside over both, the Constitution-making body as well as the Legislature. Ordinarily speaking, this should not create any difficulty, but in the circumstance where for instance the President is a Minister of the State, this difficulty may arise. For instance, it would be an anomalous thing if the President who is a Minister of State also were to preside over the Constituent Assembly when it was functioning as a lawmaking body. Consequently the Committee thought that either of two courses has to be adopted; either the President should cease to be a Minister, or, if he continues to be a Minister, the Assembly should elect another officer to be called the Speaker or Deputy President whose functions it would be to preside over the Constituent Assembly when it is in session for the purpose of making laws.

The second difficulty which the Committee came across was with regard to the representatives of the States. The House will remember that the Constituent Assembly, when it will be meeting for the purposes of law making, would be operating upon the whole field which has been included in List No. 1 of the Seventh Schedule to the Government of India Act. The House also will recall that the States at the present moment have joined the Constituent Assembly on a basis of what is called the Instrument of Accession which does not altogether tally with the subjects included in List No. 1. In fact the subjects included in the Instrument of Accession fall considerably short of the subjects included in List No. 1. The question, therefore, that arises is this, whether a body of people, who are Members of the Constituent Assembly and who are bound by the Instrument of Accession and have responsibility for a shorter number of items, should be permitted to take part in motions and in debates relating to certain other subjects which were not included in the list contained in the Instrument of Accession. There were of course two ways of dealing with this matter. One way of dealing with this matter was to adopt the procedure of what is called 'in and out', that they should sit in the Assembly and vote when an item which was being debated was common to both the Instrument of Accession as well as List No. 1, and when an item was being discussed in the House which did not form part of the Instrument of Accession, they should not be permitted to participate. The Committee came to the conclusion that although theoretically the second course was more logical, from a practical point of view such a distinction need not be made in the circumstances in which we stand and, therefore, the Committee made the recommendation that notwithstanding the subjects contained in List No. 1 and the Instrument of Accession, the representatives of the Indian States should continue to take part in all motions that may relate to all subjects irrespective of the distinction between the two lists.

The third question which the Committee felt they had to deal with was the position of the Ministers. As the House knows, there are certain Ministers who are at present not Members of the Constituent Assembly. They are five in all who fall in that category. The question therefore arises for consideration whether the Ministers who are Members of the Constituent Assembly should take part in the proceeding of the Constituent Assembly and also in the Legislature. So far as their participation in the work of the Legislature is concerned, the position is safeguarded by reason of the fact that Section 2 sub-clause (2) of the Government of India Act is retained by the Adaptation and Members of the House know under the provisions contained in Section 10 sub-clause (2) a person, notwithstanding the fact that he is not a Member of the Legislature, may still continue to participate in the work of the Legislature and be a Minister. Under that, therefore, the Ministers who are not Members of the Constituent Assembly will be eligible to sit in the Constituent Assembly when its functions as a Legislature, without ceasing to be Ministers of State.

The question that remains is, what is to happen with regard to their relationship to the Constituent Assembly. At present, as they are not Members of the Constituent Assembly, they are not entitled to participate in the work of the Constituent Assembly so far as it relates to the making of the Constitution. The Committee came to the conclusion that it was necessary that their guidance should be available to

[The Honourable Dr. B.R. Ambedkar]

the Constituent Assembly in the matter of constitution-making and therefore just as Section 10 sub-clause (2) permits them to participate in the work of the Legislature so also the Constituent Assembly should make a provision which would permit Members of Government who are not Members of the Constituent Assembly also to participate in the work of the Constituent Assembly.

Sir, there are two other matters about which the Committee has made no recommendation and it is necessary that I should refer to them. The first matter is the question of double membership. As the House knows there are certain Members of the Constituent Assembly who are also Members of the Provincial Legislature. So far there is no anomaly, because the Constituent Assembly is not a Legislature. But when the Constituent Assembly begins to function as a Legislative Body, this conflict due to double membership will undoubtedly arise. I might also draw attention to the provision contained in Section 68 (2) of the Government of India Act which deals with this matter. Section 68 (2) did not permit a member to hold double membership of two Legislatures, the Central or Provincial. But this provision has now been dropped by the adaptation. Consequently, it is permissible for Members of the Constituent Assembly when they are functioning as Members of the Legislature also to be Members of another Legislative Body. The anomaly, of course, purely and from a strictly constitutional point of view does remain. It is for the Constituent Assembly to decide whether they will accept the principle embodied in the omission of Section 68 (2) and permit double membership or whether notwithstanding the dropping of Section 68 (2) they will take such suitable action as to prevent double membership.

The second question about which the Committee has made no recommendation is relating to the administrative organization of the Assembly. As the administrative organization in the Assembly is a single unified organization it is under the exclusive control of the President of the Constituent Assembly. So long as the Constituent Assembly had only this single and solitary function to perform, namely, to prepare the constitution, there was no difficulty, in this matter. But when the Constituent Assembly will function in its double capacity, once as the constitution-making body and another time as a law-making body with another person at the head of it, namely, the Speaker or the Deputy Speaker, questions with regard to the adjustment of the staff may arise. But the Committee thought that they were not entitled under the terms of reference to deal with this matter and therefore did not make any reference to it at all.

Sir, I do not think it is necessary for me to take the time of the House any more than I have done. I think what I have said will sufficiently remind Members of what the Committee has done and will enable them to proceed to deal with the report in the best way they like.

Mr. President: Mr. Munshi has given notice of a Resolution embodying the recommendations of this Committee. I think it will be best if that motion is taken up first and the discussion may follow later.

Dr. P. S. Deshmukh: Would it not be better if we first take the motion that the report to be taken into consideration and after a decision on that take up the other amendments?

Mr. President: Is it necessary to have a separate discussion on the motion for considering the Report? I think both can go together if the House permits. Strictly speaking, that Resolution which Mr. Munshi moves is practically the same thing.

Mr. K. M. Munshi (Bombay: General): I move the Resolution which stands in my name. The paragraphs of the Resolution which I seek to move are almost in the words of the Report, except one or two things to which I will presently draw the attention of the House. The clauses are taken bodily from the Report which has been explained to the House by the Honourable Dr. Ambedkar. I need not, therefore, go over the same ground again, but I would like to draw the attention of the House to one or two changes which I have made and which I think were necessary in the interests of giving proper effect to the Report.

Para. (iv) runs as follows:

“Suitable provision should be made in the Rules of the Constituent Assembly for the election of an officer to be designated the Speaker to preside over the deliberations of the Assembly when functioning as the Dominion Legislature.”

In this connection, I have to mention that the Report has placed before the House two alternatives:

Alternative (a) is that the President of the Constituent Assembly should be a person whose whole time is given to the work of the Assembly both when engaged on Constitution-making and when transacting business of the Dominion Legislature. They have also stated another alternative: If the President of the Constituent Assembly is a Minister, provision may be made in the Rules of the Constituent Assembly for the election of an officer to preside over the deliberations of the Assembly when functioning as the Dominion Legislature.

Sir, as you happen to be a Minister, I have selected the second alternative and embodied it in my paragraph (iv) with the result that the House will have to elect an officer to preside over the deliberations of the Assembly when it functions as a Dominion Legislature.

The only other change that I have ventured to make is the name of the officer whose election I have suggested, that upon election, the officer should be designated Speaker, so that when the House sits as the Constituent Assembly, we will have the President presiding over it and when it sits as a Legislature, the officer elected will preside and we will address him as Speaker. The word Speaker being of sufficient significance, it will convey that we are sitting as the Legislature and not as the Constitution-making body. That is the only change which I have ventured to make. I submit that the motion as have moved may be accepted by the House.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, on a point of order, the motion has not been read out and moved.

Mr. K. M. Munshi: I will read it out certainly. I am much obliged to the Honourable Member for drawing attention to this and I stand corrected. My motion stands as follows:

“That with reference to the Motion by the Honourable Dr. B. R. Ambedkar regarding the consideration of the Report on the functions of the Constituent Assembly under the Indian Independence Act, it is hereby resolved that—

[Mr. K. M. Munshi]

- (i) The functions of the Assembly shall be—
 - (a) to continue and complete the work of Constitution-making which commenced on the 9th December, 1946, and
 - (b) to function as the Dominion Legislature until a Legislature under the new Constitution comes into being.
- (ii) The business of the Assembly as a Constitution-making body should be clearly distinguished from its normal business as the Dominion Legislature, and different days or separate sittings on the same day should be set apart for the two kinds of business.
- (iii) The recommendations contained in para. 6 of the Report regarding the position of representatives of Indian States in the Assembly be accepted.”

I have incorporated para. 6 of the Report. The operative part of that para is as follows:

“We agree that, as implied in the wording of this term of reference, the members of the Assembly representing the Indian States are entitled to take part in the proceedings of the Assembly on all days set apart for the business of Constitution-making. They further have the right on days set apart for the functioning of the Assembly as the Dominion Legislature to participate in business relating to subjects in respect of which the States have acceded to the Dominion. Though it is competent for the Constituent Assembly to deny or limit their participation in business relating to subjects in respect of which the States have not acceded, we should recommend that no ban or restriction be placed by rule on their participation in such business also.”

Coming to my resolution,

“(iv) Suitable provision should be made in the Rules of the Constituent Assembly for the election of an officer to be designated the Speaker to preside over the deliberations of the Assembly when functioning as the Dominion Legislature.

(v) The power of summoning the Assembly for functioning as the Dominion Legislature and proroguing it should vest in the President.

(vi) Ministers of the Dominion Government, who are not Members of the Constituent Assembly, should have the right to attend and participate in its work of constitution-making, though until they become members of the Constituent Assembly they should not have any right to vote.

(vii) Necessary modifications, adaptations and additions should be made—

(a) by the President of the Constituent Assembly to the Rules and Standing Orders of the Indian Legislative Assembly to bring them into accord with the relevant provisions of the Government of India Act as adapted under the Indian Independence Act 1947.

(b) by the Constituent Assembly or the President, as the case may be, to the Rules and Standing Orders to carry out the provisions of para. 9 of the Report and where necessary to secure an appropriate adaptation of the relevant section of the Government of India Act to bring it into conformity with the new Rule.”

In this connection I may mention one fact which I omitted to mention in the beginning. The power of summoning the Assembly and proroguing is, according to the Resolution moved by me and according to the report, to be vested in the President. As already stated, under the Government of India Act, as adapted, for the moment it rests with the Governor-General. That of course means, Governor-General as advised by the Prime Minister. But our legislative function being only an aspect of the Constituent Assembly as a whole, it is necessary that the Constituent Assembly should remain independent of the Governor-General. Therefore, it was thought that the President would be the proper person to summon or prorogue the Legislative Council.

These are all the remarks that I have to make and I hope the House will accept the resolution.

Mr. President: I have got notice of certain amendments. I find that four of these amendments are covered by the Resolution which Mr. Munshi has moved and therefore they need not be moved. There are two amendments of which I have noticed which are not covered by Mr. Munshi's Resolution, one by Mr. Ananthasayanam Ayyangar and the other by Mr. T. T. Krishnamachari.

(Shri M. Ananthasayanam Ayyangar did not move his amendment.)

Shri T. T. Krishnamachari (Madras: General): Sir, I am not moving the amendment; but I would like to say a few words on the motion before the House.

Mr. President: There is no other amendment. The resolution is now open for discussion. You can speak now.

Shri T. T. Krishnamachari: Mr. President, my object in speaking on this motion moved by Dr. Ambedkar and the amendment thereto of Mr. Munshi is to obtain elucidation on a few points, because as things are one feels he is in a maze of conflicting proposals. The first point that I would like to draw the attention of the House to is in regard to sub-section (vi) of Clause 1 of Mr. Munshi's amendment. The Honourable Dr. Ambedkar in moving the main motion drew attention to the fact that the Report had taken cognisance of Section 10 sub-section (2) of the Government of India Act thereby providing the members of Government who are not members of this Assembly the right to participate in the proceedings. This is again reiterated in the resolution which is moved as an amendment to the main motion. Sir, I would like to know whether the limitation that exists in sub-section (2) of Section 10 of the Government of India Act, namely, that those members of Government can continue in the capacity and hence can participate only for a period of six months and not more and during that time they have got to be qualified by becoming members of the Assembly applies to the members of the present Government. That is a point that I would like either Dr. Ambedkar or Mr. Munshi to make clear.

The second point I would like to mention is in regard to the designation of the officer that has been suggested to preside over the Dominion legislature. I am afraid there is some conflict between the adaptation of the Government of India Act and what Mr. Munshi stated. The adaptation of the Government of India Act deals rather drastically with Section 22 which refers to the presiding officers of the Legislature under the 1935 Act. Sub-sections (1), (2), (3), and (5) of this section have been omitted and sub-section (4) reads thus in its original form:—

“There shall be paid to the President and Deputy President of the Council of States such salaries as may be respectively fixed by Act of the Federal Legislature, and, until provision in that behalf is so made, such salaries as the Governor-General may determine”. The adaptation merely says that in sub-section (4), for “and the Deputy President of the Council of State”, substitute “of the Dominion Legislature”. So the provision remains more or less intact so far as sub-section (4) is concerned, except the change that is contemplated in the nomenclature of the legislatures and the words the Council of State and the Lower House have been removed and the words “the Dominion Legislatures” substituted. So when the entire scheme has been changed and the name Speaker has been wiped out in Section 22 of the Government of India Act, and in the following Section 23, I do not know if it is quite right or legal for the name Speaker to be introduced here. It would

[Shri T.T. Krishnamachari]

probably be better to adopt the wording of the original report namely 'an officer to preside', whatever the designation he might get ultimately.

The third matter on which I would like some elucidation is this. That is sub-clause (v) of Clause 1. The position taken up in this sub-clause is quite correct from our point of view since this is a sovereign body entitled to frame its own rules of procedure and appoint its own officers. But so long as we shall be functioning under the Government of India Act which we have adapted as a legislature, why not take the adaptation a little further and make it state that the Governor-General shall not have the power a proroguing and summoning the Assembly which shall be vested in the President? I do not think there is any legal bar to an adaptation of this sort. As I said, at the start I am open to correction: But I think that the position could be suitably rectified by proper legislative procedure rather than by means of a motion and an amendment thereto, or by an explanation by the mover of the amendment. I refer to Mr. Munshi.

Sir, yet another matter which I would like to mention here and which relates to the amendment of which I had given notice, is this. We are dealing with a number of anomalies because the position in which we are now placed is not of our own creation. A number of factors have come into play by reason of the rapidly changing political position of our country and we have to carry on as best as we could. In the circumstances, without going into personalities, I think it best, Sir, that the sphere of action of the presiding officers of the Constituent Assembly over its two functions should be clearly defined and that is why I wish Mr. Munshi had reproduced in his amending resolution those words in paragraph 6 of the Committee's report which had clearly stated it has to be remembered that though transacting two kinds of business, the Assembly is one and can have only one President and that the President should be the supreme head of it, both on its administrative side and on its deliberative side. I may at once assure the House that in bringing to the notice of the House this Particular clear and precise enunciation of the functions of the President and the consequent delimitation of the functions of any officer that the President or the House might appoint, I have no intention of either trying to put extra power in the hands of anybody or take away the power of anyone else. Only I feel that when we are dealing with circumstances over which we had no control,—we are trying as best as possible to get on with the work that we are obliged to do—let us have a precise definition here and now so that later on, whatever happens, if by any chance there is any conflict, it will be known exactly who is the supreme authority. I wish Mr. Munshi had put this idea in his amending resolution. It is quite adequate for our purpose if it is acknowledged by the mover that the wording of the report of the Committee is supreme and that it cannot be altered even by the amending resolution which has been moved. I think that assurance will serve the purpose. After all the position that we are envisaging now might last only for six or eight months. Thereafter, this Assembly will function principally as the Dominion Legislature, until the new Constitution comes into operation, and there might have to be other changes also in the status and powers of the presiding officer. But for the time being I think a precise definition of the sphere of his activities and emphasis on the fact that the President of the Constituent Assembly, notwithstanding the fact that he concedes with the permission of the House some powers to another person, still remains the supreme head both in regard to the administrative and deliberative

sections of the House, will go to satisfy fears and doubts in the minds of Members. I also hope that either Dr. Ambedkar or Mr. Munshi will try to clarify the doubts that I have stated in regard to items (iv) and (vi) of Clause 1 of the amendment moved by Mr. Munshi.

Mr. D. H. Chandrasekharaiya (Mysore State): Mr. President, I rise to a point of order. It is this. Whenever a report is brought up for consideration before this House the motion made is that the report be taken into consideration. After the Report is considered, the decision of the House is taken on the motion, and then clauses are taken up one after another. What has happened now is that the motion stands undecided and Members are permitted to move their amendments, and then even the amendment which Mr. K. M. Munshi has moved is so omnibus in character and covers so many points that it will be difficult for the Members to discuss them all together. What I would suggest is that a decision might first be taken on the motion moved by the Hon'ble Dr. Ambedkar, and then each one of the points covered by Mr. Munshi's amendment might be taken up separately for discussion and decided. This is my point of order.

Mr. President: I think the point of order which has been raised now was raised at an earlier stage, and at that time I found generally the desire of the House was that it would serve no useful purpose to have two discussions, one on the motion to take the report into consideration and another on the Resolution of Mr. Munshi dealing with the details, and therefore I allowed both to be taken up together. Both are now under discussion and Members are at liberty to speak on the Resolution which has been moved, in which all the details covered by the Report are put in.

Dr. P. S. Deshmukh: Mr. President, Sir, I would not go so far as to describe the present situation created by the presentation of the Report and the proposals embodying the proposed decisions on the Report as a messy situation, as has been done by my friend who preceded me, Mr. Krishnamachari. But I must say, Sir, that I consider the Report not very satisfactory. If we analyse the contents of the Report, I think many Members, if not most, will agree with me that the Report states either what is most obvious or what is a matter of pure commonsense for anybody. Secondly the Report contains certain alternative proposals. For example, it says you can have one President or two as you like. Stating alternative is, I submit, Sir, of no use. What we expect such a committee to do is to give us proper guidance. It is clear that the Ambedkar, that they relied more upon logic and on what was political, rather than giving this House a direction as to what was legal and constitutional. I refer to the recommendation as regards the States representatives. Let it be remembered that we have no quarrel whatever with the States representatives whether they have come here on behalf of the rulers or the people. I welcome them; I would like them to be absolutely identical with us and have all the privileges and all the right that any of us coming from other parts of India have. But nonetheless I believe it was the duty of the Committee to tell us what the legal position was so far as the exercise of the rights of these persons coming from the States and sitting in this House was concerned. It was not necessary to tell us what was logical and political. We can and shall exercise that discretion ourselves. The direction that we really wanted was as to what is constitutional and what would be legal and then ultimately there might have been a sentence or two with regard to the property of their proposal. And I should like to, make it clear that I mean no offence to any particular member of the Committee and

[Dr. P.S. Deshmukh]

least of all to Dr. Ambedkar—but there is a fair number of members in this House who characterise the work that is done by several of our committees in the same terms as I have been compelled to use in connection with this particular report. And that is the reason why they have not been satisfied with some of the reports that we got from time to time at least from some of these committees.

Even so, Sir, I think it would be futile for me to hope that it will be possible for you to give us more time for the consideration of the Report or to refer the Report back to the same Committee for further consideration. That is too much to expect. I have been sufficiently long in politics and in the legislatures to know that wise counsels do not always prevail. So I am not going to indulge in requesting you that the Committee's report should be turned down or it should be referred back. All that I wish to point out is that what is before us is not satisfactory. We have not been guided and directed on the lines on which we should have been directed, and as such the whole situation is very unsatisfactory. I will take only one or two points. I was very glad that Mr. Krishnamachari made a very cogent speech and pointed out quite a few vital defects in the Resolution that has been moved by Mr. Munshi. In fact the main purpose and the main thing with which members of the Committee should have concerned themselves was as to what is the result of the adaptations which have been made behind our back. There is reference to only one or two modifications that have been made. But all that is a *fait accompli*. We have the whole Government of India Act altered to suit. God knows whose convenience, or according to whose intelligence and dictation. But we have certain ready-made decisions before us and we are trying to tinker with them in certain places by means of this Report and the Resolution. We have as a matter of fact at least two definite things before us. Although we have been given the powers of a Legislative Assembly and called a Dominion Legislature the adapters of the 1935 Act removed the Speaker, the section referring to the election of Speaker having been omitted. Secondly, we have all been agitated about the question as to whether M.L.A.'s from the different provinces should sit here as full-fledged members of both the Legislature and the Constituent Assembly or not. The position is that that section by which a person was prevented from being a member of two legislatures has been quietly removed from the 1935 Act and this was Imposed upon this House. We have no quarrel with it; we want to get on with the work. I am merely mentioning this point by way of showing that the position is unsatisfactory. I do not question the right of any one to change or modify the sections but the whole situation is not sufficiently clear and not of such a nature as to enable the members to be clear on any particular matter. Of course when things are proposed and resolutions are moved we have got to support it in whatever condition it is, and we are so anxious to get on with decisions and Constitution-making that we do not mind in what messy or unsatisfactory condition it is. But at the same time I want just by way of criticism to suggest that it is not a very happy situation, and if it is possible for you or the Mover of the Resolution or for the Mover of the amendment to do something to attend to our grievance and redress it at least in part I shall be obliged and I am sure many other Members of the House also would feel obliged.

Shri Biswanath Das (Orissa: General): Sir, I have very little quarrel with the Resolution that was so ably moved by Mr. Munshi but

I must frankly confess that I am not happy with the Report that has been presented to us. The Report seems to support the adaptations which I am afraid very few Members of this House will do. Both the Report and Mr. Munshi's Resolution therefore proceed on the basis that the Constituent Assembly which has been the Dominion Parliament from the 15th of this month has to function in absolutely two different capacities, namely, the Constituent Assembly and the Dominion Parliament. Having taken up this stand, namely absolute separation out and out, they necessarily follow the same course throughout their plan and that in where the parting of the ways comes in. A reading of the Indian Independence Act of 1947 shows that the Constituent Assembly is the supreme legislature of this country. That is a position which has been accepted by the Constituent Assembly, or if not by the Constituent Assembly, at least it has been accepted by our leaders and the Constituent Assembly is a party to it from the 14th August. This Constituent Assembly has accepted the Indian Independence Act, has elected its leader and has authorised the leader to go and invite Lord Mountbatten to be the Governor-General of India. In that view of the question, the Constituent Assembly as such, has accepted the position assigned to it by the Indian Independence Act of 1947. Therefore there is no use saying, today at this late hour, that we function as two different bodies, that we function differently and absolutely for different purposes. The purposes are one and the same; and while on the one hand we have to prepare a Bill for the future constitution of India and pass it into an Act we have also to look to the day to day administration of the country and also undertake such other legislation as might be necessary. Therefore the proposal of the Committee to function in a dual capacity and also the Resolution of my Honourable friend Mr. Munshi giving the silent approval of the House to the same cannot be accepted by us. That is where my complaint is. Sir, if once we accept this principle it means two Secretariats and that we will have the same experience of the Secretariat of the Constituent Assembly who are not efficient nor very polite and should undergo some training in politeness and good manners.

An Honourable Member: Can you prove that?

Shri Biswanath Das: Yes, if necessary I can cite examples. An Honourable friend spoke about their inefficiency. I must say that the Secretariat of the Constituent Assembly is not efficient. In these circumstances, these are mainly additional arguments as to why we cannot take these two functions as dual functions. If we undertake to do the work of the Constitution-making on different days, with which suggestion I fully agree, it is not because we are different, but for convenience of the transaction of the business. To quote another illustration, let us take the disposal of the business in the High Courts. There we have civil matters on one day, criminal on other days and so on. In the same way this one single body will undertake the disposal of Constitution-making on certain specified days, and ordinary legislative business on some other days.

Mr. H. V. Kamath: The mike has become inefficient.

Shri Biswanath Das: It is a question of opinion. *(Laughter)*

Some Honourable Members: The mike is not working.

Shri Biswanath Das: I am very sorry. I will speak loud. That being the position, I feel that the time has come when a little plain

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speaking is necessary and we have to make it very clear that we function here as absolutely one legislature for no different purposes, except one of convenience for the transaction of our business. Only to that extent am I prepared to agree with the Committee that we may allot different days for Constitution-making and different days or hours on the same day for ordinary legislation or for the discussion of other measures an executive work. That being the position, I suggest that this duality of functions should cease.

Mr. President: I am afraid the current has failed and so the mike is not working. I take it the Members will just raise their voices so as to be audible to the other Members.

Shri Biswanath Das : Yes, Sir, Having done that, I came to the second question on which I wish to address the Honourable Members of this House, and that is the question of adaptations. Sir, adaptations have been undertaken without consulting the Honourable Members of this House and important alternations have been made to which I must record here a note of protest. Let me illustrate my point. We have met here in the Constituent Assembly, in a single session. We have no session except one, namely we begin and we will close as and when we decide. Our rules are very clear in this, If we adjourn from time to time it is because for our own convenience and for the convenient transaction of our business. But the fact remains that the Constituent Assembly functions as one single body till its main business is over, namely, the preparing and passing of our constitution. Sir, having seen those rules, the Parliamentary Act has been framed which means it has been accepted. Therefore the position remains that the Constituent Assembly sits all along, be it for one year, or two years or six months, it is all one session. This being the position, I strongly protest against the adaptations wherein it has been laid down that the Governor-General has to summon us to sit in sessions of the Parliament to transact business. It is no concern of his, no business of his. We are members of the Constituent Assembly and the Constituent Assembly meets and adjourns at its pleasure. We cannot delegate its functions to the Governor-General however much we may love him, like him or respect him. Nor do we delegate this important function to the Honourable President, though we love him, like him, and esteem him. Sir, this adaptation is very unfortunate and I think it is fair that we should record our protest.

Secondly, I come to prorogation. We have met and we ourselves shall prorogue. No authority, no power on earth can make us prorogue this Assembly and we cannot delegate this function to any other authority except the Constituent Assembly itself. In this view of the matter, I am not prepared to accept the adaptation. I have just picked up a few and there are a number of other items on which adaptations are not necessary, nor are they fair to us.

I now come to the third question, the participation of the States. My Honourable friends, the Members of this Committee have recommended to us that they, the States representatives should be with us. We are prepared to have them here. But is it their proposal that they should not only participate in our deliberations and discussions but also in the matter of voting? I must frankly confess that I must take more time to think over the question than what has been given. So far as the States representatives are concerned, they constitute about 6 Members—a fairly good fraction of the strength of the legislature. It would

be very hard, very difficult for us to agree without further consideration whether these 62 Members of the Constituent Assembly should be allowed to vote with us also in a budget for which they have absolutely no responsibility—except in respect of the three subjects.

Before closing. I would beg of you to consider the question, that we have got a Legislative Assembly Secretariat, well-trained, efficient and ready at hand to do the work. Under these circumstances, why should we have a duplicate Secretariat, which means puzzle, expenditure and inefficiency? Under these circumstances I would beg of you to consider this question from the point of view of finance and from the point of view of efficiency.

Mr. Hussain Imam: Mr. President, I was very sorry to see that some of our colleagues have taken objection and exception to the work of the Committee. As a member of the Committee, I have come here to explain the position in which we worked. We were restricted by the term of reference which was originally framed here. The Members who are being wise now did not suggest any modification in the term of reference. But now, having worked under that restricted term of reference we are being criticised on two counts. Firstly, that we have exceeded our limits and the other that we have not done enough. These two self-contradictory charges have been levied. Now what was the position of the committee? A committee is never superior to the parent body which has created it. The parent body is always supreme and has the right to modify or change the suggestions of the committee. The committee cannot impose its will. What it really does is to bring forward before you in a concrete form all the pros and cons of a particular course of business. Now, it is obvious that the Constituent Assembly has dual functions. Even that has been attached by the *ex*-Prime Minister of Orissa, that it should have no dual functions. Now, this is what was regarded by one Honourable Member as obvious and by the other Honourable Member as wrong. But what is the position? Please remember that after the Indian Independence Act, the whole power for making the constitution for today and tomorrow vests in you; for the whole of the administration of today and till such time as the new constitution starts functioning, the power vests in you. This House being in that position, it cannot and should not ignore one of the two functions. The genesis of this Committee was that a question was raised here and discussion took place that at the present moment we should have some forum to question the Executive Government on the actions which they are taking in the present circumstances. Pandit Jawaharlal Nehru was present and after a lot of speeches, he said that it would be better if some Committee were to sit and examine all the implications and suggest ways and means. We were working really in order to make arrangements for dual functions to be performed simultaneously. The two functions are so separate that they could have been kept in watertight compartments. We might have sat in August, say, as the Constituent Assembly, and in September as the Legislature. That was one of the courses open to us. The other course open to us was that we should have separate days in the same session. The third course was that within the same day we should have separate hours. All these subjects were referred to us and as conscientious people we have not given any preference to any one of the three courses. We have pointed out all the three courses that are open to you. You can have either

[Mr. Hussain Imam]

different hours in the same day, or you can have separate sessions, but we have indicated that instead of different hours, we prefer different sittings. You can have a morning sitting for one purpose and an afternoon sitting for another purpose. That is all we have done. We have left the discretion entirely, to you and the better course would have been to allow the Executive Government which is responsible to the House to use its discretion and give us the time for the legislative business just as they do for non-official business in the sessions. We can similarly have two kinds of days, Constituent Assembly and the Legislature. A time may come when the Constituent Assembly function may become so small that even one day would be enough in the week and four days may be devoted to legislative business, or at other times you may have it the other way round. I mean, you may be doing the Constituent Assembly work for four days in the week and one day only for the legislative work.

Now, the question arises of duality of control. We have stated in so many words that the President shall be the head of both the legislative and Constitution-making work. Now, it is open to the House, if it thinks that a particular type of executive is required to carry on the secretariat work of the Constituent Assembly when acting as Legislature, to make that rule. If it thinks that it is necessary to have an amalgamation of the two sections, it can do that also, or if it wishes that one side should be dismissed and another set appointed, it has perfect power to do it. Why ask the Committee to take up the burden when it is not in the terms of reference? It would be something of an imposition. We are really there not to impose our will on you, but to point out to you what are the courses open to you and what would be the implications thereof. In fact, it has been said that we have exceeded our terms of reference. In two instances, that was necessary because we found that we were up against certain things which, though not strictly in the four terms of reference, were nevertheless so pertinent and so germane to our discussions that we could not ignore them and therefore we have submitted some observations on those subjects. But we have taken care not in any way to impose our will on you.

The question which was put about Section 10 (2) of the Government of India Act, while it lays down that a Member of Government must become a member of the Legislature within six months or vacate office, is also one of those Sections which you can change and if the Executive Government feels that a change is necessary it can make that change; or if it feels that it is necessary to bring them into the Constituent Assembly, there are openings enough for those Members to be brought in. I therefore think that it is really making a mountain out of a molehill to suggest that any adaptation of the clauses will stand in the way of the work. Knowing that it is a little bit difficult and takes time to make adaptations, we have suggested a better course, that the Constituent Assembly being a sovereign body and having the right to have these rules framed as it likes, we have recommended that the work which we think to be very essential and immediate should be done by means of rule-making power. For instance, the question of summoning the Legislature. Instead of suggesting that the clause should be changed and the power should vest in some other authority than the Governor-General we have suggested that the Constituent Assembly's own rules should be so adapted as to enable the President to have the power. But to say that not even the President should have power to fix the date

and it is so important that the House cannot surrender that right to anybody is, in my opinion, showing too much suspicion. Knowing the state of affairs through which we are passing, we have to rely on our officers, on the President, to do the right thing. The President is always subject to the House. Although he is the supreme head, nevertheless, under the democratic theory he is subject to the vote of the House. So if he does wrong you can always correct him, but for executive functions you must have an executive head. There are certain things which democracy even delegates to executive, and it is one of those functions, *i.e.*, The summoning of the Legislature, which is sought to be given to the President. We always give directions. The executive carries them out. For instance, the exact dates had not been fixed for the last session. The last session was called on a date which the President found suitable and no one raised an objection to that. So far the President has not used his discretion in a wrong manner.

All these are human elements. We must not be creatures of rules and regulations or theories. Let us remain human beings and regard things from that angle and trust where trust is necessary and distrust where you must distrust. Otherwise work cannot proceed. I therefore suggest that Mr. Munshi's resolution may be adopted.

Shri R. V. Dhulekar (United Provinces: General): *[Mr. President, I rise to support the report which has been put before the House. So far as the principles in it are concerned they are very appropriate and no one can have any objection against them. In this connection I want to say a few things as follows.

The first is that no one can have any objection to what is said in Section 1 to the effect that our Constituent Assembly should continue to work until the constitution is completed, and even after that it should continue to work until the new Lower and Upper Houses are brought into existence. I desire to say only one thing in this connection. It will be proper if we confine the use of the words "Dominion Legislature" which constantly come to our lips, to the Indian Independence Act. The reason is that the word "Dominion", somehow does not sound very good. In 1929, Dominion Status was very much discussed and we had passed resolutions against it and in favour of complete independence. Even though Dominion Status appears attractive to many, yet if it is translated into Hindi, its meaning will be—the place of slavery. And if it is translated into Persian or Urdu, then also it would have the same meaning. Therefore I feel that if on some suitable occasion, either the drafting Committee or our Assembly or the President were to give it some such name as Indian Parliament, or Parliament of India, then it would be very proper.

Besides, there is one more question about which many people have misgiving, and that is as to what should be the rights of the representatives from the States. I think that these representatives should be able to discuss our problems and also vote upon them. I want to tell those who have any misgivings that their fears are not proper.

*[English Translation of Hindustani speech begins.

[Shri R.V. Dhulekar]

We must now consider the whole of India as a single unit, and every individual who takes his seat here, every member who comes here should find an honourable place. I think it would not be proper if we tell him that he can speak only for a short while, or, when the occasion arises to express a definite opinion (which comes only when hands have to be raised either in support or opposition), we tell him that he has no right either to vote or to express his opinion.

One other thing I want to say to those who think that those representatives who are the Princes' nominees should not have full liberty of expression, because the States are backward. We see that some of our Provinces are very progressive whereas some are backward. In some Provinces rules and regulations have been framed which are democratic and popular in form. Many good laws have been made for the workers and peasants. In our United Provinces, "Gaon Hukumat" Bill and "Prajatantra Rajya" Bill have been passed by the Assembly and now they will go to the Upper Chamber, the Council. Such a Bill has not yet been passed by any other Province. Therefore, it is not proper to say that States' representatives should find no place here, only because the States are backward. Some have also suggested that those representatives who have been popularly elected should be given the opportunity to speak whereas those who are nominated by the rulers, should be denied such facility. I have to submit that they also should be given full facilities so that they may be able to occupy their rightful place. I think that if they get opportunity to see clearly, what democracy is, how legislative assembly proceedings are conducted and what collective wisdom they contain, then very soon they will endeavour to extend democracy there. It is for this reason that I believe that it is not proper to insinuate that the nominated representatives of the States should not have full rights. I am of opinion that it is a very great task to take democracy a step further and this task has been accomplished by our Dr. Ambedkar and his colleagues, and I want to congratulate him very warmly.

There is one more question and that is that we are going to appoint a Speaker for the Legislative Assembly—which is a popularly elected law-making body. This is a very good suggestion. I do not approve of giving power to the Governor-General for two reasons, firstly because he is a foreigner and secondly because the word Governor-General does not sound well. Therefore he should not have, the power of summoning or proroguing the Assembly. It now remains to be settled as to who should have the right of summoning and proroguing the Assembly; whether it should be the President or the Speaker. When it was stated that the Honourable President should not be the Speaker, because he is a Minister, then my opinion was that when we appoint a Speaker, he should be given the right of summoning or proroguing the Assembly. Because the argument which applies to the first point also applies to the second one. If a Minister should not have the right to sit in the Legislative Assembly as our President, then this argument can be applicable there as well. But I also agree that there is no harm in accepting the statement of some of our members that we should not go into constitutional matters and their provisions.

Now the question of double-membership remains. Some members have perhaps suggested that because of the presence here of many representatives of Provincial Assemblies their work is likely to slacken

and therefore they suggest that double membership should be abolished. It has been said that the Constituent Assembly should consider whether double membership should be retained or not. My humble submission is that Constituent Assembly has nothing to do with this question. Provincial Assemblies have the right to send their elected representatives to the Constituent Assembly; and the Provincial Assemblies have sent those men here in whom they had full confidence; and these men are working here. My opinion is that when we have worked in the Constituent Assembly from the very beginning, then at this stage our ideal should be that there should not be any such alteration in the Constituent Assembly as may make it difficult for those, who come after us, to understand the task which we have already accomplished. I admit that most of the prominent men of all provinces are here and it can be said that the provinces may have to suffer some loss on that amount. But my submission is that the distinguished men are here because they were considered the fittest by the Provinces. Therefore there is great force in the argument that double-membership should be retained till a new Legislative Assembly is set up on the basis of new elections, and my humble submission is that this question should not be over-emphasised.

Now I will conclude after saying this that in our existing constitution there are many things which our Constituent Assembly has not yet considered; and I suggest that the Constituent Assembly should be summoned at least once before the meeting of the Legislative Assembly in which we will consider the whole legal position. Before meeting as the Dominion Legislature there should be a session of this Constituent Assembly in which all remaining matters may be considered and the committee drafting the constitution may have our collective opinion on all matters so that it may be able to draft a good constitution. With these remarks I conclude my speech.]*

Mr. President: Mr. Tajamul Husain may speak now. I would ask him to be brief. I want to finish the discussion at one o'clock.

Mr. Tajamul Husain: I will be brief, Sir. Sir, the question before us is, how was this Assembly constituted? Was it constituted by any Act of Parliament or how? Sir, it was not constituted by any statute or by any law. It came into existence by means of the Statement of April 16. After that, it assumed power and it became the Sovereign body for the whole of India. As such it is in existence now and is continuing. We know there is no difference between the Constituent Assembly as a constitution-making body and the Constituent Assembly as a legislative body. Both are absolutely one and the same. There is no difference. This Constituent Assembly has been summoned. To suggest now that the Governor-General should go out of his way and summon us again would be meaningless. You as President here, in my humble opinion can summon us as Members of the Constituent Assembly to make a Constitution for India or to make laws for the day to day administration of the country.

Sir, now a point has been raised whether there should be another President and another Speaker when we sit as a legislative body. I think, Sir, that the President of the Constituent Assembly can continue to function as President or Speaker of the legislative body. But the only difficulty is that you happen to be, unfortunately or fortunately also a Member of Government. Therefore, it has been suggested that it will not be right or proper for you to sit there, because many questions will be asked

] * English Translation of Hindustani speech ends.

[Mr. Tajamul Husain]

about the departments in your charge and the difficulty will be in your having to answer them as Member of Government or as Speaker. You have got power given by us to delegate your power to anybody you like. you can appoint a Deputy Speaker or some other functionary from any one of us to discharge your duty. Now I will give you an instance for a precedent. In Bihar, Dr. Sachidananda Sinha (who happens to be a Member of this Assembly) was President of the Council at the same time a Member of the Executive Council of the Government. He functioned in both the capacities at the same time. If such a thing can be done under the British rule, why can it not be done under our own rule, Sir? Therefore I submit that there is absolutely no necessity for the Governor-General to call us again in different capacities. We are already in existence and continuing and a meeting can be called by you at any time you wish. It will be proper for you when necessary to leave the Chair and appoint a Deputy Speaker in your place to carry out your duties.

Pandit Hiralal Shastri (Jaipur State): *[Mr. President, my friends Dr. Deshmukh and Mr. Dhulekar, have asked me to make my humble submission before you. Some are of opinion that from the Constitutional and legal point of view the representatives of Indian States should not be given equal rights here; others have suggested that even though the States are backward, they should be allowed to participate fully. I revere this Constituent Assembly and I deem it an honour to be elected as its member. But I cannot help saying that this Assembly has been summoned under special circumstances and many persons of different shades of opinion are included in it. There are many who have come here through the Provincial Assemblies and many have come from the Indian States. Even among those who come from the States there are different categories. There are some who have been nominated by the rulers, some who are self-nominated and some who are called elected representatives though there can be genuine objection against calling them elected. There are some who are themselves ruling chiefs, though small. One class is of those who are Princes and there are others who can be called Heirs-apparent. In this fashion, many different types of men have come here. Circumstances were pressing; we were invited hesitatingly and we reached here after many obstacles. I will not repeat these matters; you all know them very well. But today we have taken our seats here just like the representatives of the Provinces. I hope you do not think that we have come here as beggars, or that we have to beg against the law and the Constitution. There was a time when the fight for the country's freedom was being fought here. In that fight the Indian States' people took part without any invitation. and fought shoulder to shoulder with you. They did not require any invitation. Therefore today, we have not come uninvited. We are here on invitation of some sort or other, and we are here in this gathering. Now, having come in, there is a talk of serving different kinds of purposes. We may be told "Look here, friend, you can deal with three matters but you must not touch the rest, because it is against your Interest." This can be said but you should not say it. You can count on us that we ourselves will stay away from that which is not proper for us to discuss. We may ourselves not take part in those things; but if that is the decision then I have nothing to ask for, from you. It is our misfortune that our rights have not been fully recognized, but if we are here by right, then no matter whether they be

*[English Translation of Hindustani speech begins.

Rulers or Princes, or Heirs-apparent, whether they are nominated (by these rulers) or self-nominated or whether they are Prime Ministers, they are all equal. They are, in no way backward, but are progressive and they also include men of action. All have come here without any distinction of caste or creed and their rights should be equal. That is my opinion.]*

Mr. President: I think we have had enough discussion on this, I would now call upon Dr. Ambedkar to reply.

The Honourable Dr. B. R. Ambedkar. Mr. President, the report made by the Committee obviously has received a mixed reception. Some members of the House have described it as a messy document. I do not propose to give any reply to those who have described the Report in those terms, because personally I think that the arguments advanced by them do not deserve sufficient consideration. All that I propose to do in reply is to meet some technical points which have been raised by my friends Dr. Deshmukh and Mr. Biswanath Das. Dr. Deshmukh refers to two recommendations made by the Committee. One was the recommendation relating to the permission to be granted to the Members representing the States for taking part in all the deliberations of the Committee. The second recommendation to which he referred was the recommendation in respect of the Ministers of the State to whom the Committee said it might not be desirable to permit to take part also in the proceedings of the Assembly, Dr. Deshmukh said that all that the Committee observed was logical or convenient. The Committee did not say whether this was constitutional. I am very much surprised at that question particularly because Dr. Deshmukh happens to be a lawyer. As a matter of fact he ought to have realised that we have really no constitution at all. The Constituent Assembly is making a Constitution, and anything that the Constituent Assembly does would be constitutional (*Hear, hear*). If the Constituent Assembly say that the State representatives should not take part that would be perfectly constitutional. If the Constituent Assembly said that they should, that would also be perfectly constitutional. Therefore that sort of observation I thought was entirely misplaced. With regard to the point raised by my friend Mr. Biswanath Das, I also feel a considerable amount of surprise that he should have thought fit to make the observations he made. If I remember correctly what he said, his observations related to two points. He said that the Committee was dividing the Constituent Assembly into two parts, that it was an indivisible body, that it was functioning as an integral, one whole. Well, I do not know whether he is not in a position to appreciate that the working of a constitution is quite different from the making of ordinary law. The distinction, it seems to me to put it in a nutshell, is that the Constituent Assembly, is not bound by the Constitution. But a Legislature is bound by the Constitution. When the Constituent Assembly functions as a legislature it would be bound by the Government of India Act as adapted under the Independence Act. Anybody would be in a position to raise a point of order. Anybody would be in a position to say whether a particular motion is *ultra vires* or *intra vires*. But such a question can certainly not arise when the Constituent Assembly is functioning as a body framing the Constitution. And I thought that was a sufficiently substantial distinction to enable us to understand notionally at any rate that the two functions were different that the purposes were different, that the work was different and if we are intending to avoid confusion, the practical way of doing so would be to let the Constituent Assembly

]* English Translation of Hindustani speech ends.

[The Honourable Dr. B.R. Ambedkar]

meet in a separate session as distinct from a legislature. He also raised some grouse against the adaptations. Now, I must frankly say that no one here is responsible for the adaptations that have been introduced in the Government of India Act, 1935.

If he refers to section 8 sub-clause (1) of the Indian Independence Bill, he will realise that under that section the power of adapting the Government of India Act of 1935 to suit the new status, which the Constituent Assembly has as a legislature, has been vested entirely in the Governor-General. I think it is possible that the Governor-General did take advice from some source in order to decide what adaptations to introduce. Therefore, at the present moment, nobody is responsible for it. If the Constituent Assembly is not satisfied with the adaptations which have been introduced in the Government of India Act, the very same section 8 sub-clause (1) states that the Constituent Assembly would be perfectly within its competence to change the adaptations and to introduce any other that it may like. I therefore, submit, Sir, that there is no substance in the points that have been raised by the critics of the Committee.

One other point to which my friend Mr. Krishnamachari referred: He said that Mr. Munshi's resolution omitted to take into account the second part of the report which dealt with the question that the President was the sole authority both on the deliberative and administrative side. He questioned why the resolution which has been framed and submitted to us by Mr. Munshi, practically accepting all the proposals of the Committee did not contain this particular provision. I should like to say that if Mr. Krishnamachari reads the report carefully, he will find that that particular part of the report is an observation on the part of the Committee and not a recommendation and therefore, I submit my friend Mr. Munshi was perfectly justified in not referring to it.

Pandit Lakshmi Kanta Maitra: Sir, I want to ask Dr. Ambedkar certain information. First of all, I want to know from him whether or not he is convinced that there is necessity for re-adaptation and if so, is it in his contemplation to bring any fresh adaptation in respect of certain matters before the next session of the Constituent Assembly or at any earlier date. For instance, the abolition of Speakership in the Government of India Act and its introduction in this recommendation here. There are also certain other matters: for instance, Ministers who are not members of the Constituent Assembly but who are required to be members. Is it contemplated to bring in any other measure for re-adaptation in respect of such parts?

Secondly, he has just referred in his speech to the fact that he did not go into the question of the administrative control of the department that is going to be set up and he said that it was beyond the terms of reference, if I understand him aright. There is some apprehension in our minds that there is likely to be conflict in the event of another independent machinery being set up for this Organisation when it is to function as the legislature.

The third question is whether or not the proposal as made in the resolution which has been moved by Mr. Munshi, is going to be a purely temporary one, only for the period we continue to function in a dual capacity, as a constitution-making body as well as the legislature?

An Honourable Member: Is it a speech or a question?

Mr. President: I would remind Pandit Maitra that he cannot make a speech. He has put the question and Dr. Ambedkar will answer if he chooses.

An Honourable Member: Even the question is out of order.

Pandit Lakshmi Kanta Maitra: Why is it not permissible? when the honourable member replies to the debate and an honourable member does not understand, he is perfectly within his right in asking further questions to get points cleared up.

Mr. President: You have put the question. Dr. Ambedkar will reply.

The Honourable B. R. Ambedkar: I shall be brief. The first question was whether we contemplate any change in the adaptations of the Government of India Act. My answer is that that is a matter for the House to determine what adaptations the House wants. But I want to assure my friends here that we have got the power to change the adaptations. The Government of India Act with its adaptations is not entirely binding on us in the sense that a change is not beyond our purview. If the House, on a reconsideration of the matter, finds that certain adaptations ought to be changed, it would be perfectly possible to undertake that provision.

The second question which my honourable friend Mr. Maitra put to me was whether the unity of administration is likely to be affected and there is likely to be a conflict in view of the fact that there may be two offices, one President presiding over the Constituent Assembly and secondly a Speaker presiding over the legislative body. What the Committee has said is that there is a theoretical possibility of conflict. But I take it that there need not necessarily be a conflict. In practice, it should be perfectly possible for the two offices, the President and the Speaker of the Assembly to work in union and to so arrange the timing of the Constituent Assembly as well as the legislative body in perfect order so that notwithstanding the fact that we have two offices, we need not be afraid that there would necessarily be a conflict.

With regard to the third question, obviously, the arrangement that we are making now for the purpose of converting the Constituent Assembly into a legislative body, undoubtedly will be temporary. It would last so long as the function of constitution-making has not been completed. When the function of constitution-making is completed, obviously, one or the other arrangement would vanish and we shall then continue only to function as a legislature.

Mr. Naziruddin Ahmad: One more question. The honourable member has said that readaptation may be made by the House. Is it possible for the Governor-General to make further adaptations?

The Honourable Dr. B. R. Ambedkar: It is a question of law. This House has power to change the adaptation.

Mr. Naziruddin Ahmad: I do not deny that. That question is whether in the opinion of the honourable member, the Governor-General can make further adaptation.

The Honourable Dr. B. R. Ambedkar: He can not, because he will have to act on the advice of his Ministers.

Mr. Naziruddin Ahmad: Whether he can do so on the advice of his ministers?

An Honourable Member: Is this a law court, or a cross examination?

The Honourable Dr. B. R. Ambedkar: I am not sure and I do not like to give an offhand answer.

Mr. President: I think we have to put the motion clause by clause as was suggested. Clause 1.

“(i) The functions of the Assembly shall be

- (a) to continue and complete the work of Constitution-making which commenced on the 9th December, 1946, and
- (b) to function as the Dominion legislature until a legislature under the new Constitution comes into being.”

The motion was adopted.

Mr. President:

“(ii) The business of the Assembly as a Constitution-making body should be clearly distinguished from its normal business as the Dominion Legislature, and different days or separate sittings on the same day should be set apart for the two kinds of business.”

The motion was adopted.

Mr. President:

“(iii) The recommendations contained in para. 6 of the Report regarding the position of representatives of Indian States in the Assembly be accepted.”

The motion was adopted.

Mr. President:

“(iv) Suitable provision should be made in the Rules of the Constituent Assembly for the election of an officer to be designated the Speaker to preside over the deliberations of the Assembly when functioning as the Dominion Legislature.”

The motion was adopted.

Mr. President:

“(v) The power of summoning the Assembly for functioning as the Dominion Legislature and proroguing it should vest in the President.”

The motion was adopted.

Mr. President:

“(vi) Ministers of the Dominion Government, who are not members of the Constituent Assembly should have the right to attend and participate in its work of Constitution making, though until they become members of the Constituent Assembly they should not have any right to vote.”

The motion was adopted.

Mr. President:

“(vii) Necessary modifications, adaptations and additions should be made—

- (a) by the President of the Constituent Assembly to the Rules and Standing Orders of the Indian legislative Assembly to bring them into

accord with the relevant provisions of the Government of India Act as adapted under the Indian Independence Act, 1947.”

The motion was adopted.

Mr. President:

“(b) by the Constituent Assembly or the President, as the case may be to the Rules and Standing Orders to carry out the provisions of para. 9 of the Report and where necessary to secure an appropriate adaptation of the relevant section of the Government of India Act to bring it into conformity with the new Rule.”

The motion was adopted.

Mr. President: The question is:

That the Resolution as a whole be adopted, namely:

“1. That with reference to the Motion by the Honourable Dr. B. R. Ambedkar regarding the consideration of the Report on the functions of the Constituent Assembly under the Indian Independence Act, it is hereby resolved that—

- (i) The functions of the Assembly shall be—
 - (a) to continue and complete the work of Constitution making which commenced on the 9th December, 1946, and
 - (b) to function as the Dominion Legislature until a Legislature under the new Constitution comes into being.
- (ii) The business of the Assembly as a Constitution-making body should be clearly distinguished from its normal business as the Dominion Legislature, and different days or separate sittings on the same day should be set apart for the two kinds of business.
- (iii) The recommendations contained in para. 6 of the Report regarding the position of representatives of Indian States in the Assembly be accepted.
- (iv) Suitable provision should be made in the Rules of the Constituent Assembly for the election of an officer to be designated the Speaker to preside over the deliberations of the Assembly when functioning as the dominion Legislature.
- (v) The power of summoning the Assembly for functioning as the Dominion Legislature and proroguing it should vest in the President.
- (vi) Ministers of the Dominion Government, who are not members of the Constituent Assembly, should have the right to attend and participate in its work, of Constitution-making. Though until they become members of the Constituent Assembly they should not have any right to vote.
- (vii) Necessary modifications, adaptations and additions should be made,
 - (a) by the President of the Constituent Assembly to the Rules and Standing Orders of the Indian Legislative Assembly to bring them into accord with the relevant provisions of the Government of India Act as adapted under the Indian Independence Act, 1947.
 - (b) by the Constituent Assembly or the President, as the case may be to the Rules and Standing Orders to carry out the provisions of para. 9 of the Report and where necessary to secure an appropriate adaptation of the relevant section of the Government of India Act to bring it into conformity with the new Rule.”

The motion was adopted.

Mr. President: Now that this resolution has been carried, I purpose to take up the adaptation of the rules and the Standing Orders and also such sections of the adapted Government of India Act as are necessary.

With regard to the question which has been raised in the course of the discussion about the staff. I propose to appoint a committee consisting of the officials on the staff of the Constituent Assembly and on the staff of the Legislative Assembly to prepare a scheme for re-organizing the two Departments so as to make the work as efficient and as economical as possible.

Mr. K. M. Munshi: May I point out that the day after tomorrow is a holiday and Members are anxious that the Assembly should close tomorrow ? The day after tomorrow is a Hindu holiday and most Members want to return to their homes.

Mr. President: The matter is in the hands of the Members. I propose to close the session tomorrow.

The Assembly then adjourned till Ten of the Clock on Saturday the 30th August 1947.