

Friday, 26th November, 1948

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**CONSTITUENT ASSEMBLY
DEBATES
OFFICIAL REPORT**

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CONSTITUENT ASSEMBLY OF INDIA

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CONSTITUENT ASSEMBLY OF INDIA

Friday, the 26th November 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

STATEMENT *re* EIRE ACT

The Honourable Pandit Jawaharlal Nehru (United Provinces : General): Mr. Vice-President, Sir, the House is aware that certain developments have taken place recently in Eire which affects the relationship of Eire with other Commonwealth countries. On the 17th of November the Eire Act, entitled the Republic of Ireland Act, was given a first reading in the Dail. The second reading took place on the 24th of November.

In view of the close relationship that has existed between Eire and the other Commonwealth countries, it was considered desirable to clarify the position that would result from the passage of this Bill. The Government of India have been in communication on this subject with the Government of the United Kingdom and the Government of Eire and both these Governments have been good enough to inform us of the position, as they view it, that will arise after the passage of the Republic of Ireland Act. They have sent us the texts of the speeches made in their respective Parliaments on this subject.

As the passage of this Act might affect Indian citizens in Eire and Eire citizens in India, the Government of India are naturally interested in a clarification of this subject.

In the course of the speech made by Mr. Costello, the Prime Minister of Eire, on the second reading of the Republic of Ireland Bill on the 24th November in the Dail, he said:

“In the new Bill provisions will be made to ensure that Commonwealth citizens shall be afforded comparable rights to those afforded to our citizens in the British Commonwealth. There is one thing I should like to make clear to our friends in Britain and in the Commonwealth generally; it is that after the passage of this Bill we will continue, provided they so desire, the exchange of citizenship rights and privileges. Ireland does not now, and when the External Relations Act is repealed. Ireland does not intend to, regard their citizens as foreigners or their countries as foreign countries. Throughout, the position of the Irish Government is, that while Ireland is not a member of the British Commonwealth of nations, it recognises and confirms the existence of a specially close relationship arising not only from ties of friendship and kinship but from traditional and long established economic, social and trade relations based on common interests with the nations that form the British Commonwealth. This exchange of rights and privileges, which it is our firm desire and intention to maintain and strengthen, in our view constitutes a special relationship which negatives the view that other countries could raise valid objections on the grounds that Ireland should be treated as a foreign country by Britain and the Commonwealth countries for the purpose of this exchange of rights and privileges. These are the considerations which we put forward to Britain and the Commonwealth countries. We find that they, on their part, were equally determined not to regard the passage of this Bill as placing Ireland in the category of foreign countries or our citizens in the category of foreigners, but were prepared to continue the exchange of citizenship and trade preference rights. Accordingly, the factual exchange of rights that has existed hitherto will continue unimpaired. By reason of the fact that we have eliminated from this exchange controversial forms, we may reasonably hope that a greater spirit of goodwill and co-operation will actuate this factual relationship.”

[The Honourable Pandit Jawaharlal Nehru]

On the part of the United Kingdom, Mr. Attlee, the Prime Minister, made the following statement in the House of Commons yesterday, the 25th November 1948:

“In 1937 a new constitution was enacted in Eire in which the Crown played no part. The Eire Executive Authority (External Relations) Act which was passed in 1936, however, authorised His Majesty the King to act on behalf of Eire in certain matters within the field of external affairs as and when advised by the Eire Executive Council to do so. In December 1937, the U.K. Government stated, after consultation with the Governments of Canada, Australia, New Zealand, and South Africa, that they, like those Governments, were prepared to treat the new Constitution as not effecting a fundamental alteration in the position of Eire as a member of the Commonwealth.

On the 7th September last the Prime Minister of Eire, Mr. Costello, announced that the Eire Government were preparing to repeal the External Relations Act. Subsequently, Mr. Costello confirmed this intention.”

Mr. Attlee then refers to various discussions with the Eire Ministers in order to explore the consequences which would flow from the legislation proposed in Eire:

“As a result of these discussions the United Kingdom Government have been able to give the most careful consideration to the relations between the U.K. and Eire when the Republic of Ireland Bill comes into force. The U.K. Government recognise that, as has been stated by Eire Ministers, Eire will then no longer be a member of the Commonwealth. The Eire Government have however, stated that they recognise the existence of a specially close relationship between Eire and the Commonwealth countries and desire that this relationship should be maintained. These close relations arise on ties of kinship and from traditional and long established economic, social and trade arrangements based on common interest. The U.K. Government for their part fully associate themselves with the views expressed by Mr. Mac Bride and are at one with the Eire Government in desiring that these close and friendly relations should continue and be strengthened.

Accordingly the U.K. Government will not regard the enactment of this legislation by Eire as requiring them to treat Eire as a foreign country or Eire citizens as foreigners. The other Governments of the Commonwealth will, we understand, take an early opportunity of making a statement as to their policy in the matter.

So far as Eire citizens are concerned the position in the U.K. will be governed by the British Nationality Act, 1948. The Eire Government have stated that it is their intention to bring their legislation into line with that in Commonwealth countries so as to establish by Statute that in Eire, citizens of Commonwealth countries receive comparable treatment.”

I should like to associate the Government of India with the Statements made in the Eire and British Parliaments and to say that we are perfectly prepared to continue on a reciprocal basis the exchange of citizenship rights and privileges with Eire. What our future relationship with the Commonwealth is going to be is a matter which, the House knows, is under close consideration and I trust that a satisfactory solution will be arrived at before very long. For the present we are concerned with the situation as it is. I should like to make it clear that after the passage of the Republic of Ireland Bill, we shall not consider Ireland in the category of foreign countries or her citizens in the category of foreigners, provided Ireland offers our country and our citizens the same rights and privileges.

I should like to add that between Eire and India there has been for a long-time past a close bond of sympathy and friendly feeling. The Government of India trust that as in the past there will continue to be close and cordial relationship between the Governments and peoples of Eire and India.

Shri H. V. Kamath (C. P. & Berar : General): May I request you to be so good as to direct that copies of the Republic of Ireland Bill and of the speeches made there on in the Dail Eireann, and by Mr. Attlee in the House of Commons are supplied to Members of this House, as also the statement made by the Honourable Pandit Jawaharlal Nehru?

Mr. Vice-President (Dr. H. C. Mookherjee): That can be supplied. For that we have got to obtain the documents first. When they are secured, they will be supplied to all the Members.

The Honourable Pandit Jawaharlal Nehru : In the statement I have already made I have quoted extensively from the speeches of Mr. Costello and Mr. Attlee in their respective Parliaments so that the honourable Member's point will perhaps be met if a copy of my present statement including the references to the statements made in the Dail Eireann and in the House of Commons in London is distributed. That certainly can be done. As to the copy of the Republic of Ireland Bill, certainly it can be made available, but I am not quite sure if it is possible to do so very soon. Perhaps it will meet the purpose of the House if some copies are obtained and placed on the table of the House.

Mr. Vice-President : That would meet the situation, I think. I now call upon Shrimati Durgabai to move the motion which stands in her name.

MOTION RE. ADDITION OF SUB-RULES TO RULE 38-P

Shrimati G. Durgabai (Madras : General): Mr. Vice-President, Sir, I beg to move the following motion standing in my name:

“(a) That the existing rule 38-P be renumbered as sub-rule (1) of rule 38-P, and to the said rule as so renumbered the following sub-rules be added:—

- ‘(2) The President shall have the power to disallow amendments which seek to made merely verbal, grammatical or formal changes.
- (3) The President shall also have the power to select for consideration and voting by the House the more appropriate or comprehensive amendment or amendments out of the amendments of similar import and any such amendment not so selected may, unless withdrawn, be deemed to have been moved and may be put to the vote without discussion.’”

Sir, let me make it clear at the very outset that my object in bringing this motion before the House is mainly to secure quicker disposal of the very large number of amendments so far received to the Draft Constitution and thus expedite the work before us. I believe there are already more than four thousand amendments received to the Draft Constitution. I consider that it would be very difficult for us to consider such a large number of amendments within a reasonable time and therefore it is considered essential that a special procedure should be devised in order to secure quicker disposal of the work and also expedite the work. Sir, the procedure suggested by me in the amendment placed before you, if adopted by the House, would not only help us to secure this object but also enable us to spend the limited amount of time available on more useful amendments and also amendments of a substantial nature. The object of the rule is to give the Chair the power to select the more appropriate or comprehensive amendment or amendments out of the amendments of similar import. It also gives the Chair the power to disallow such amendments as seek to make merely verbal or grammatical or formal changes. Sir, before I commend the motion for the acceptance of the House, I appeal to all to understand the scope of my amendment in the spirit in which it is

[Shrimati G. Durgabai]

placed before you. It need not create any fears or apprehensions in the minds of Members or any section of the Members of the House that it seeks to curtail their privileges. In giving this power to the Chair, I do not think that we are doing anything unusual and I am also sure that the Chair in exercising this power would displease none but please all. We have ample reason to believe that the Chair would be very judicious in exercising this power. With these few remarks I commend my motion to this House for its acceptance.

Mr. Vice-President : We shall now take up the amendments one by one.

Mr. Naziruddin Ahmad (West Bengal: Muslim): May I offer my remarks now?

Mr. Vice-President : There will be general discussion after the amendments have been moved. You would be given sufficient time to put your point of view before the House. The first amendment stands in the name of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : Mr. Vice-President, Sir, I think it is my duty, while moving the amendments which stand in my name, to give expression to certain general thoughts which arise in my mind, but before doing so it will be proper for me to move the first amendment, which stands in my name. Sir, I beg to move:

“that in the proposed sub-rule (2) of rule 38-P, after the words ‘President shall’, the words ‘after hearing the Member who has given notice of any amendment’ be inserted.”

Mr. Vice-President : Are you not moving amendment No. 1?

Mr. Naziruddin Ahmad : I am sorry, I missed it. I also move:

“that the proposed sub-rule (2) of the rule 38-P be deleted.”

Mr. Vice-President : I suggest, Mr. Naziruddin Ahmad, that you also make now any general observations you wish to make.

Mr. Naziruddin Ahmad : I bow to your ruling.

Sir, I should have thought that the rules, which are in existence and which have been framed after a considerable amount of care and based on other models, are sufficient to give ample power to the Chair to regulate the debate. These rules were framed on the supposition that the Members also exercise a considerable amount of discretion and restraint in their speeches. The present motion implies a kind of suspicion about the willingness and ability of the Members to keep to that wholesome line as well as perhaps a little doubt as to the ability of the Chair under the ordinary rules to regulate the debate. What are the rules which are applicable to this situation? An amendment can be ruled out very justly if it is irrelevant, mere tedious repetitions and the like, defamatory or unparliamentary or objectionable from that point of view. What has happened which has induced the charming lady to come forward here to move this amendment? I submit that the experience of what has happened in the House gives a clue. For some time past, I very much regret to find that amendments of a so-called drafting or formal nature or of some grammatical significance are being ruled out practically in the debates, not that you, Sir, rule them out, but in the treatment of those amendments, Members are to a certain extent hustled by some Members in the House and the replies given are often few, laconic and unhelpful, and in many cases there are no replies but a large number of counter-allegations and facts are adduced.

I submit that a consideration of the proposed rules will show how carelessly these amendments have been drafted, and what mistakes lie almost in every line of these amendments. It is from a consideration of these amendments alone that the great necessity of allowing drafting improvements follows.

Sir, the motion is to the effect that the President shall have the power to disallow amendments which seek to make merely verbal, grammatical or formal changes. I have already submitted that they can always be ruled out on grounds of irrelevance, repetition and various other well-known reasons. But can they be properly rejected, merely on the ground that they are verbal? Can there be any amendment which can be described as merely verbal which changes the meaning of the context? Then, there is the question of grammatical amendments. I think the little mistakes which the honourable Mover of the Draft Constitution has committed have startled many Members. I ask you, Sir, in all humility : should you rule out an amendment merely because it is a grammatical amendment? Does it necessarily follow that a grammatical amendment is an unsubstantial amendment, that it has no relation to the clauses to which it appertains? I believe grammar is an agreed set of rules for the sake of clarity and clearness of meaning. Grammar is nothing if it does not add to clarity of thought, expression and writing. In these circumstances, I believe that the proposed sub-clause (2) of rule 38-P is absolutely misconceived.

Then coming to formal changes, can you rule out a formal change or should you rather be inclined to rule out a mere verbal-looking change because behind a verbal-looking change, there may lurk an important change in the meaning of the passage? In these circumstances, I beg to submit that there is a fear that though all the Members have absolute confidence in the strict impartiality and extreme kindness with which you have been dealing with them, there lies a suspicion behind these changes that the Honourable Mr. Vice-President will perhaps be unable to regulate the procedure with the existing rules. I submit, Sir, that Members have always shown a disposition cheerfully, willingly and readily to obey your rulings and your helpful guidance. I submit it would be far better to leave the matter in the hands of Members, leave them to the good sense of individual Members and the good sense of the House. Instead of trying to force the hands of Members and to a certain extent put you, Sir, in an awkward position, I submit that these rules should go. These are the things which strike me at the moment. For some time, I feel that amendments of a drafting or formal nature or which look like them are being regarded with some amount of disfavour. They are being apparently rejected without any debate, without any argument and without any sufficient consideration. I submit, Sir, that this gives a sense of frustration amongst Members who have come here in a humble capacity to assist in the framing of a first-class Constitution. Sir, the momentous Constitution which we are making today would be a farcical affair otherwise. It would be copied as a model by other Constituent Assemblies in the world. We find hundreds of years after the speeches, the proceedings of Constituent Assemblies are read by constitutional lawyers and historians with a great deal of interest. I ask you, Sir, and my honourable Friends in the House as to whether these proposed changes are at all called for and whether they do not cast a suspicion upon the general body of Members as well as individual members as to their willingness and ability to stick to the strict rules of business.

Sir, as to the drafting of these rules, the less said the better. I submit that the proposed clause (2) is absolutely unnecessary. Then coming to clause (3), we have a startling piece of draftsmanship and I say that it has been so carelessly, so hopelessly drafted that it should be rejected on the face of it altogether. That shows the need of a careful revision in the House of a far more important document than these amendments themselves, namely, the Constitution. Sir, in clause (3), the first part deliberately clashes with the second.

The first part, Sir, seeks to select certain amendments for consideration. For what purpose? The amendment says "the amendment not so selected may be put to the vote". What do we come to? You have been specifically

[Mr. Naziruddin Ahmad]

requested to select an amendment and for what purpose? The purpose is to select the amendment and then put to the vote a different amendment, namely, the one *not* so selected! Therefore, I beg to submit the very drafting of clause (3) is absolutely, hopelessly and ridiculously faulty. I have never spoken in this strain at any time in this Assembly, but circumstances, tendencies and the whispers we hear all round compel me to speak like this. Can the House accept clause (3) where the latter part absolutely rejects the former? I submit, Sir, I have tabled an amendment to remove the word 'not' and then you can make some sense out of it. I shall request you to reject this amendment because it is 'verbal' and because it is verbal I shall bow to your ruling. We will have enacted a piece of legislation which shall have no meaning at all. While pointing out the dangerous character of the word 'not', I shall seek your permission not to move for its deletion and leave the House and the honourable Members to consider what has been really achieved.

Then, Sir, I submit, part (b) seeking to introduce Rule 38-W is also mischievous. It is also badly conceived and badly drafted. What is the effect of this rule? It purports to remove a lacuna, that is the supposed absence of any power of the Vice-President to act as President within the meaning of certain rules. Sir, I find on a close examination that the powers of the Vice-President have never been defined with clarity, and it is attempted at this late stage to meet the situation. I submit, Sir, that as we have provided for a Vice-President without defining his powers, it is obvious that the Vice-President has the powers of the President or the Chairman, as the case may be. Supposing for the sake of argument that a further clarification was necessary, Rule 38-W falls far behind the requirements of the situation. I submit that it is attempted by this Rule to regularise any irregularity which may have been committed by you, Sir, in giving rulings, declaring decisions regarding the orders of the House. If for one moment we can assume that you have been acting illegally—which I hope and believe you are not—once we concede that you have not been acting with jurisdiction, then, this power given by the proposed Rule 38-W will not legalise what has happened already. In fact, if it is supposed that you have no power to do anything beyond the mere fact of presiding, then, what will happen to the acts done by you, Sir, as the presiding officer of this august House, before the passing of the rule? I have attempted to regularise the procedure. I should have thought that such a suspicion was unnecessary; but if the suspicion has any legal basis, if you entertain any suspicions in this respect, you should have something by way of introducing a new Rule 14-A as I have suggested in my amendment, that the Vice-President shall have all the powers of the President in certain respects, with the important Explanation that this Rule shall have retrospective effect as if it was passed on the 4th of November or from the date on which you have been pleased to preside over the deliberations of this House.

In an amendment of a rule consisting of only two provisions, one an amendment to Rule 38-P and the other a new Rule 38-W, there are so many gross errors. I submit that this will show.....

Shrimati G. Durgabai : Mr. Vice-President, Sir, I have not moved that part of the motion (b).

Mr. Vice-President : That has not yet been moved.

Mr. Naziruddin Ahmad : I realise the force of this submission. But, am I to understand that this will not be moved?

Shrimati G. Durgabai : I have only moved the first motion.

Mr. Vice-President : Why not put it conditionally, 'if'.

Mr. Naziruddin Ahmad : ‘If’ such a motion is moved afterwards, it shows lack of appreciation of the points in issue. I was suggesting certain considerations from a general point of view: do we require drafting amendments or what are merely described as merely drafting amendments as distinct from substantial amendments—as if drafting amendments are not substantial amendments? This un-precise way of thought is staggering to those who have any experience in this line. I submit that the entire House would rather protest against the introduction of these Rules. We are entitled from the draftsmen or from the members in charge of these legislations some clarity of thought, clarity of expression and purposeful writing. I submit, Sir, these Rules lack all these essential qualities.

On the merits, I submit, Sir, sub-rule (2) should go. You cannot be asked to rule out an amendment merely because it is ‘verbal’, ‘grammatical’ or ‘formal’. I submit, the powers which you have got already, the great traditions which we have hitherto built up and the great rules of the House of Commons and other Parliaments which are before us are quite sufficient. The most important thing is the good sense of the Members and Movers. In this respect, so far as I am concerned, Sir, I am perfectly willing to obey the slightest wishes of the House properly expressed, privately or publicly. What are you going to do with regard to mistakes of a similar nature which lurk everywhere in the Constitution? Not that these mistakes show any lack of power or draftsmanship on the part of the eminent authors of the Bill; but every Bill should be revised. We have not got a second Chamber. The Bill has not gone through a Select Committee. At an earlier stage, I suggested a select Committee; that is the place where drafting amendments and other things could be coolly and properly discussed. That was ruled out on the ground that it was dilatory. Some of the amendments were carelessly described by eminent members as merely dilatory or of a frivolous nature. I think the word ‘frivolous’ cannot be applied to any Member of this House. If there is anything frivolous, the rules give you ample power to rule them out. I submit from every possible point of view, from the point of view of general convenience, from the point of view of general efficacy of the rules which have been found efficacious so far, these new rules should be dropped.

Am I to move all the amendments, Sir?

Mr. Vice-President : I think you had better move all the amendments which stand in your name dealing with sub-rules (2) and (3). If you want to make any further observations, you are at liberty to do so.

Mr. Naziruddin Ahmad : In regard to amendment No. 2 which I have already moved, I have sought to introduce a clause that before rejecting an amendment, you would be pleased to give the Member who is ruled out a chance of expressing his opinion, giving his reasons. I have no doubt that while rejecting an amendment on the ground suggested in the rule, in view of the fact that your hands are attempted to be forced, I think this provision should be necessary. But I may well leave it to the good sense of the House and your innate sense of justice and fair-play which you have so far displayed. Then I come to amendment No. 6.

I beg to move:

“That in the proposed sub-rule 38-P, for the word ‘amendments’ the words ‘such amendments’ be substituted.”

This is only verbal.

Then I move No. 8:

“That in the proposed sub-rule (2) of rule 38-P, the comma after the word ‘verbal’ and the word, ‘grammatical’ be deleted.”

I submit the office or officer who has dealt with the amendment is apparently unfamiliar with this method of expression of a deletion or a comma and a word. In fact for purposes of clarity this is perfectly admissible as is shown by all

[Mr. Naziruddin Ahmad]

the leading authorities on legislative drafting. I submit it often happens that if I move for the deletion of the word “grammatical”, the effect would be that the comma is left behind which would be wrong. They two go together but they have been treated by the office as separate amendments. Then, Sir, I also move amendment No. 9:

“That in the proposed sub-rule (2) of rule 38-P the words ‘and to remit them to the Drafting Committee’ be added at the end.”

I do not exactly know my own position. Unofficially I am hearing that I am the object of these proposed rules. I am the target. It is an open secret that I am the target—not the unhappy target but the happy target. If that is so, I should acknowledge a deep debt of gratitude to the honourable lady Member who has done me this signal honour, *viz.*, proposing the most unconstitutional, most undemocratic rule expressing want or faith in a particular Member in the House and also with a lurking suspicion about the ability of the Chair—whoever may be for the time being occupying the Chair—his ability to conduct the proceedings of the House. Sir, in these circumstances I feel highly honoured by this. My object is not to carry amendments. My object is in my own humble way to suggest improvements. It may be that in the ultimate analysis and on further consideration, I may be proved to be wrong and my amendments unsubstantial. I shall be very glad if they are ruled out after consideration but that is not what is taking place. I have not been moving all my amendments. There are similar amendments in various groups where I have moved only one as a type and I have refrained from moving the rest because I know the same arguments will be repeated. In these circumstances I beg to submit that the rules should not be directed against one or two men. The other rule is—Part (3) of the rule—perhaps directed against another respected and indefatigable member of the House, *viz.*, Professor K. T. Shah. In fact this is the impression which is freely being given out. I do not think, Sir, you should be given rules to gag Members. Even if the rules are accepted by the unanimous vote of the House you will not exercise them without asking for the reason, without knowing the purpose and the effect of the amendments. I submit amendments cannot be ruled out on their face value. They may have, and they often have, very substantial value. I submit the way the amendments are being dealt with in the House gives colour to that impression. While we are framing the Constitution, while we are providing for freedom of thought and expression and action subject to certain well-recognized checks, here you are checking, curtailing the very freedom of debate, the freedom of an individual Member who has devoted some time and energy in a humble attempt in a most insignificant capacity to improve the drafting. But I am not discouraged by the fact that they are not accepted. A good work according to philosophers is its own reward and I shall be happy if after all these, these rules are accepted and my amendments are ridden roughshod over. Provided I have attempted to do my duty, I shall be happy. If I am ruled out the responsibility will not be mine. The responsibility will be that of the members and of you, Sir. I submit that these rules should be withdrawn. From a drafting point of view they are badly handled and they are misconceived. They give out a very bad odour. There is something like a High Command feeling behind these rules. I submit that this gives the impression of totalitarianism. If you do not tolerate the reasonable debate of the minority—I am using the word minority not in the communal sense but in a numerical sense—then the freedom that you think of would be a mockery. If this Constituent Assembly should show us this example, then the underlings of Government, the various Provincial Authorities will ride roughshod over the minority and that is fatal to democracy. The efficacy of democracy is the right given to a minority to express their views freely, subject only to rules of relevancy and other rules which are well known. These artificial rules

for the sake of decency, for the sake of appearance and for the good name of the House, should be dropped. I submit, Sir, these proceedings will be read all the world over and I submit that we should.....

Mr. Vice-President : May I point out that these should come towards the end. There are several amendments standing in your name which should be moved first of all.

Mr. Naziruddin Ahmad : Sir, I move:

“That the proposed sub-rule (3) of rule 38-P be deleted.”

No. 13, about the absurd word ‘not’, I do not move. I will leave to the honourable Member in charge of the amendment to keep it and try to make out a meaning.

Mr. Vice-President : Mr. Biswanath Das—Are you moving No. 15? In that case Mr. Naziruddin Ahmad will not move it.

Shri Biswanath Das (Orissa: General): I will move it.

Mr. Naziruddin Ahmad : May I say what I feel about it. With regard to amendment No. 15 which my honourable Friend has kindly intimated his desire to move, I may say that it will not do to proceed without a discussion. The proviso that you will select some amendments without discussion is purposeless and meaningless. There should be discussion. How can you ask the House to give its opinion without discussion? After all democracy is Government by debate, by free exchange of thought, but what is attempted to be given here is an authority to be given to you to select amendments without discussion.

Then, Sir, I move amendment No. 17:

“That after the proposed sub-rule (3) of rule 38-P, the following proviso be added:

‘Provided that before the President so selects any amendment, the member who has given notice of any amendment shall have the right to explain the nature and purport of his amendment.’”

I have made my purpose absolutely clear. I submit that all the safeguards which I have suggested are necessary, or we should content ourselves with the existing rules.

Sir, in case there are mistakes of the nature I have suggested, should we allow them to go on uncorrected, and to remain in the Constitution as so many faults and blemishes? Or should we ask the Drafting Committee to revise them and correct them where necessary? What should be the procedure, and what are the characteristics of the amendments which should be left to the drafting committee? How will the Drafting Committee understand the meaning and purport which a member attaches to his amendment if you do not give him an opportunity to explain them? Is he to dance attendance on the Drafting Committee and be its suitor, or should he be a litigant humbly making his submissions before the Drafting Committee? Sir, these are weighty considerations for removing the blemishes in the Constitution. I have said enough and if this does not convince the House, and if still I am ruled out, I shall cheerfully bow down to the decision of the House, knowing that I have discharged my duty. Thank you, Sir.

Mr. Vice-President : I have to inform the House that I have in my hand a letter of authority from our President which I shall read out, and I think that will clear up much of the misunderstanding. It runs thus:

“I hereby delegate to the Vice-President, Dr. H. C. Mookherjee, my powers and duties under all the rules in Chapter VI of the Constituent Assembly Rules excepting rules 38-U and 38-V therein.”

Shri B. Das (Orissa: General): Sir, on a point of information. I would like to know if there is any time limit on speakers on this motion. If there is none, I suggest, you have the prerogative to lay down a time limit so that filibustering speeches may not be made.

Mr. Vice-President : I am not inclined, in a matter of such vital interest, to place any time limit on any one, so long as irrelevant matters are not introduced in the discussion.

Now, Mr. Kamath may move Amendment No. 3.

Shri H. V. Kamath : Mr. Vice-President, Sir, the motion moved by my honourable Friend Shrimati Durga Bai seeks to clothe or invest the President with certain extraordinary powers, and as a consequence, to abrogate or abridge the inherent rights of Members of this House, either inherent or conferred upon them by the rules of procedure which we have already passed. I am sure that none of my colleagues here, no colleague of mine here, will lightly or willingly surrender any of his rights, and I am equally sure that the President and you, Sir, will, as you have always been, be zealous in the vindication of the rights of Members of this House. I desire, therefore, to request my colleagues here to bestow their very earnest consideration on the motion before us today, and I would appeal to you, Sir, also to permit a full discussion on the motion before the House.

Coming now to my amendment, Sir, it is purely a verbal amendment which seeks to bring this clause or sub-rule in conformity with the rules that we have already passed. If the House turns to rule No. 31, sub-rule (4), the language employed there is—

“The Chairman may disallow any amendment which he considers to be frivolous or dilatory.”

But the expression here that—“The President shall have the power to disallow . . .” is a very clumsy expression. I have not seen it used in any of the rules which make up this booklet which is with every one of us—Rules of Procedure and Standing Orders. It is far more correct to say that “the President may disallow amendments. . . etc.” On this proposed sub-rule (2) I have to make one observation. This seeks to give special powers to the President by empowering him to disallow amendments. But after being disallowed what will happen to these amendments? Will they be consigned to the waste-paper basket or even to some less envious fate? Under rule 38-R even suggested changes in punctuation and marginal notes have to be referred to the Drafting Committee. If so, I do not see why we should not adopt the very amendments. I am glad to see that my honourable Friends Mr. Pataswar and Mr. Gupte have tabled amendments to this effect and I hope the House will agree to this course, namely, that all these amendments disallowed under rule 38-P(2) shall be referred to the Drafting Committee for consideration and necessary action.

Then, Sir, I shall not move amendment No. 7 because If the amendment suggesting reference to the Drafting Committee is adopted, there is no need for this to be moved.

My next amendment is No. 11 which relates to rule 38-P(3), and in which for the words “The President shall have power to select”, etc., I seek to substitute the words “may select”, etc. The reasons I gave for my first amendment apply with equal force to this also.

I then come to my amendment No. 12 which seeks to insert the words “same or” before the word “similar”. Instead of saying “amendments of similar import” I think it is more comprehensive to say “amendments of the same or similar import”.

My next amendment is No. 14 which seeks to substitute the word “may” for “shall” wherever it occurs. Under the existing rules the President has two kinds of powers,—discretionary and mandatory. In the Rules of Procedure which we have adopted, you find that in the case of mandatory powers the word used is “shall” and in the case of discretionary powers the word used

is “may”. Rule 33 says that the President has no discretion and has got to put the motion to the vote. Here when the President has selected for consideration and voting any one amendment or amendments which in his judgment are proper or comprehensive, all the other amendments which have not been so selected must be deemed to have been moved and must be put to the vote. There is no discretion allowed to the President and the word “shall” in place of “may” will bring out the meaning of the proposed sub-rule.

Here again the construction of the proposed sub-rule is to my mind very defective. It is said here that any amendment not so selected may, unless withdrawn, be deemed to have been moved. But an amendment cannot be withdrawn unless it has been moved in the House; it can be withdrawn then only by leave of the House. I do not understand, therefore, how the proposed sub-rule is to be construed, *i.e.*, an amendment shall be deemed to have been moved unless withdrawn. The question of withdrawal arises only after it has been moved in the House; therefore this portion of the sub-rule has to be rewritten and recast.

Again I fail to see how any motion can be deemed to have been moved unless it is actually moved in the House. It is a strange procedure which, I am sure, will not be sanctioned in any other legislature in the world. Unless an amendment is formally moved in the House the President cannot assume that it has been so moved. I submit that this is a fundamental matter and I hope the House will not accept the amendment as it stands. If the Member does not want to move the amendment he will say so; and if he wants to move it he must be given a chance to move it in the House, and if it is not so moved it should be deemed to have been not moved at all. If it has not been moved it certainly cannot be put to the vote. So any amendment that a Member wishes to move must be formally moved in the House. The proposed sub-rule seeks to abrogate the right of a Member to move an amendment in the House and seeks to confer that power indirectly on the President. I do not see how this can be done—is it by some sort of jugglery or magic? If we adopt this procedure it may waste more time of the House and the remedy may be worse than the disease. Therefore I have tabled the proviso amendment No. 16, which reads:

“That in the proposed sub-rule (3) of rule 38-P, after the words ‘without discussion’ at the end, the following proviso be added:

‘Provided that a member whose amendment has not been so selected for consideration shall, if he so desires, be permitted by the President to state why his amendment should be considered.’”

This, Sir, seeks to protect and vindicate the inherent right of a Member of this House, and I am sure, Sir, that you will be the last person to abrogate or abridge any of the inherent rights of Members of this House.

To illustrate my point, I would only say this: that this amendment to proposed sub-rule 3 relates to amendments of substance—substantial amendments. Therefore, no Member here, I hope, will surrender to the President his right of moving amendments in the House.

It may be argued that the President will select wisely such an amendment which covers all the other amendments tabled on that subject, or which are of similar import. Perhaps this may be acceptable in case the President gives priority to those Members who have tabled amendments to participate in the discussion. But even that, Sir, I personally will not accept and every Member who wishes to move his amendment must be given the right to move it in the House.

Take, for instance, the amendments that have been suggested to the Preamble to our Constitution. There are various amendments invoking God. Perhaps, the President advised by the Drafting Committee, or the Consultative Committee, or some other persons in high places, might select one of

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these amendments. But if you peruse them and scrutinise them carefully, you will find that every amendment, besides an invocation to God, does contain certain other matters which are not covered by other amendments, and certainly if only one amendment is selected and the rest are not, Members who have given notice of the other amendments will have no chance to put their point of view before the House.

I therefore appeal to this House and to you not to pass this motion as it has come before the House. It has got to be drastically and radically reworded and recast so as not to infringe the rights of the honourable Members of this House. If I may be pardoned for saying so, if this motion is passed as it has come before us, I have no doubt in my mind that this sovereign body, the first sovereign body in India's recent history, will become the laughing-stock of the world.

Shri Biswanath Das : Sir, I move:

“That in the proposed sub-rule (3) of rule 38-P, the words ‘without discussion’ be deleted.”

I do not know whether I have to thank myself or be sorry that I should have been scheduled with my honourable Friend, Mr. Naziruddin Ahmad, though altogether from a different point of view. Sir, in the first place, I must frankly state that I fully support my friend, Shrimati Durgabai for this amendment. This is a very necessary and useful one and has our fullest support. The reason for this is that we have been here for the last three weeks, and need I say that we have not been able to finish even 21 articles in the course of these 21 days that we have been sitting. The country outside is anxiously waiting to have a Constitution for our country so that the new set-up will be in working order at least from 26th January 1949. That being their anxiety, we share with our countrymen this anxiety. We are anxious therefore to see that this phase of our activity should terminate as early as possible. From that point of view I welcome and support the resolution of my friend, Shrimati Durgabai.

Having stated so far, I will state why I have given notice of this amendment. I will just take the stages that we have been following in connection with our work, namely: first, we have passed the Objectives Resolution and thereafter motions for appointment of committees came before this House. They were discussed on each occasion. The committees sat and deliberated and submitted their reports. The reports were discussed threadbare in this House—word by word and phrase by phrase—and they were voted upon. Principles were determined and all these were handed over to the Drafting Committee—a set of expert gentlemen elected by us—to put them in proper phraseology. It has been seen in the course of these 21 days that the honourable Members of the Drafting Committee have, so far as possible, brought in expressions and used those with great care and caution from constitutions of countries which have been working their constitutions for ages. If English language, a comma, a full stop, idioms, or any set phraseology has to be questioned, I should say they have done ample justice in their selections and in the choice of their expressions and phrases. These have been amply demonstrated in the course of our discussions both here and elsewhere. That being so, there is, I believe, little need for us to waste time over verbal, grammatical or formal changes in words and phrases in the shape of amendments.

If one day has to be allotted for one article. I am afraid we have to sit for more than one year because we have 313 articles and then there are eight schedules each of which also has a number of sections. I shudder to think what extent of time will be necessary if we have to go on discussing every amendment of which notice is given, irrespective of the fact that what it wants discussed is perhaps a comma, a semi-colon, a grammatical error, etc.;

which have also to be debated and voted upon in this House. Under the circumstances the resolution that has been moved by Shrimati Durgabai is very necessary after our experience of the last 21 days.

Looking at the Chair, I must frankly say that, you, Sir, have given us ample scope, despite protests from certain quarters, to express our views and have on no occasion given room for any honourable Member to feel that his point of view was not allowed to be properly placed before the House.

Speaking of the Congress party, I may mention that we have been meeting from day to day not even excluding Sundays for two, three and four hours at a stretch discussing these amendments and other possible and necessary amendments. I feel, Sir, that the Consultative Committee appointed by the Congress party is doing ample justice to their work and that explains why new amendments that have not been given notice of by honourable Members have also been brought in, discussed and adopted by the House. All these go to show that ample caution is being exercised in this regard in our anxiety to see that a proper Constitution is evolved.

Sir, the motion moved by Shrimati Durgabai is comprehensive enough. It gives scope for fair discussion and expresses the fullest confidence in the Chair to give ample opportunities to Members to discuss all aspects of every question. It makes mention of 'comprehensive amendment'. It is very clear. To give an illustration: Suppose amendments 1, 2, 3, 4, 5, 6, 7 and 8 have been given notice of. The Vice-President selects No. 8 or 7 and 8. These will be fully discussed and all shades of opinion would be placed before the House before the vote is taken on them. But I do not know why Shrimati Durgabai says at the end of the proposed sub-rule (3) 'without discussion'. Nothing is being done without discussion. We discuss the whole thing. Nothing remains to be discussed after the comprehensive amendments have been debated, and that is why I have tabled my amendment for the omission of the words 'without discussion'. I differ from my friend Mr. Naziruddin Ahmad in thinking that any amendment is put to the vote without discussion. That will be an injustice to the Honourable House and is never done. The procedure of the Constituent Assembly is different from that of the Legislatures. The Constituent Assembly has got its own procedure which allows full scope for the discussion of resolutions and other motions. If our friends want to take in Constitution-making as much time as the representatives of the States took in America in the 18th century, we will have to sit at it for one or two years and even more. Are my friends willing and anxious to devote that amount of time for this purpose? I say that the country is anxiously waiting for a Constitution. We want to bury alive this Act of 1935 as early as possible. How long are we to go on with Adaptations? Therefore, I request my friends to accept the motion before the House, of course without the words 'without discussion', for, nothing is done here without discussion.

Sir, in this work-a-day world, we cannot afford to spend so much time over a Constitution which may be changed in course of time. After all, the provisions for effecting a change in the Constitution are more elastic than those provided in other Constitutions. Under the circumstances there need be no anxiety on this score.

Before I conclude I would quote a story from Srimath Bhagavatham. Emperor Khatwanga was taken to Heaven. It was then found that he had still a few *nimishas* or seconds of life on earth still remaining. He runs away from the heaven with the idea of serving his people even during those few remaining seconds. What should we learn from this? Are we to stay long here discussing commas and semi colons in these days of trouble, strain and distress throughout the country? Why cannot we leave these to the Drafting Committee of experts who have spent so much of their valuable and useful

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time on it? In the circumstances I appeal to my friends to accept the motion with the amendment I have suggested.

With these few words I move my amendment.

Mr. Vice-President : The amendments are now open for general discussion.

Shri Damodar Swarup Seth (United Provinces : General): Mr. Vice-President, Sir, with your permission and to my great pain and sorrow, I propose to oppose the motion moved by honourable Shrimati Durgabai and oppose it, Sir, with all the vehemence at my command. Sir, I wonder whether we are considering the Draft Constitution of free Independent India clause by clause in all seriousness and solemnity or whether we are rushing through an emergency legislation to be passed by a certain date and if it is not passed by that date, the heavens will fall and the earth will stop moving on its axis. Already, a very large number of amendments have been whipped off and vetoed by the majority party and more will be vetoed by them in future. And now this motion to amend the rules to give more power to the Honourable the President to disallow certain amendments; if that is the attitude, it is possible that the majority party or the party in power may have their own way, but, Sir, it will not be possible to deceive the Indian people that this Constitution has been made by them and for them. We may deceive the world outside, but we cannot certainly deceive our own selves. Because the majority party have got in their hands the proverbial lathi, they can have the proverbial she-buffalo of their choice, but what about the Indian people and also what about the party in majority too? As I have just said, a very large number of amendments which ought to have been moved by the members of the majority Party have been vetoed. So, there is no democracy even in the majority party, what to say of others, Sir. It is dictatorship of the party bosses pure and simple. I therefore say, Sir, that the motion is not suited to the conditions of the day. I have full faith in the dignity, impartiality and honesty of the Chair and I have every hope that the Chair will uphold the rights of the House. But, Sir, the passing of this motion will mean that we have bid good bye to democracy. Democracy requires that every amendment here, every amendment tabled, must be discussed in all its aspects. There should be no party-whip for not moving amendments. As I have said, Sir, we are not doing anything that can be characterised as an ordinary job. We are considering the Draft Constitution of free, independent India; we are moulding our destiny. So, no amendment which has been tabled should be disallowed. If amendments are vetoed like this, that will be a negative attitude to democracy. I therefore, Sir, appeal in all humility even to the members of the majority party that it is in their own interests as also in the interests of the public, that they insist on moving every amendment and discuss it in all its aspects. By doing that, they will be doing the sacred duty which has been entrusted to them by the Indian people. If, however, they in their intoxication of being in majority, neglect this duty, then they may pass this Constitution as they like but the Indian people will never own that Constitution. As I said on a previous occasion, I repeat once more that this Constitution has not actually been made by the Indian people and it will at best be considered to have been made and passed by only fifteen per cent. representatives of the population of this country and that too by indirect election which in the words of Professor Laski maximises corruption. I therefore hope, Sir, that this House will seriously ponder over this motion and reject it and will give the House an opportunity to discuss and consider in all their aspects all the amendments which have been so far tabled.

Prof. K. T. Shah (Bihar: General): Mr. Vice-President, Sir, I am much obliged to you for allowing me this opportunity to express my sense of deep regret and resentment against this amendment to the rules calculated to pounce upon what little liberty of speech we have in this House. We, Sir, may not

be all able to cast pearls of wisdom before honourable Members; but I trust that you will not regard, and those responsible for drafting this Constitution will not regard, us all as swine before which pearls of wisdom cannot be cast even by them.

The new amendment to the Rules tries to shut out amendments which are supposed to be, or which are taken to be, merely verbal, grammatical, or formal. Verbal amendments, Sir, have been made often, not only by the other Members of this House, but also by the draftsmen themselves. If such a rule is to be in operation against only those who have not had the honour to belong to the Drafting Committee, but is not to be used against those who, after having drafted after very careful weighing of each phrase, after earnest consideration of the various articles and clauses of this Constitution, discover that they are not what the draftsmen actually intended them to convey, and try to alter words or make verbal amendments, it would hardly be fair, especially if non-official Members should not be at liberty to do so. This, in my opinion, would be so unjust and unparliamentary that I trust this House will not entertain such a proposition.

Sir, the other day I had the misfortune to suggest what looked like a merely verbal amendment, that is, to change the words, "all citizens" to "every citizen". Much to my surprise, I was happy to find that even the learned Dr. Ambedkar was able to see the justice of that suggestion, and made a promise that he would consider, and consider favourably, what looked like only a mere verbal change. On the other hand, an amendment which Dr. Ambedkar himself made to article 40 was also, unless one was able to see the arguments which he was pleased to advance in support of it, a verbal amendment. The idea remains substantially the same.

Verbal amendments of this kind, whatever the appearance, are suggested, not merely for the fun of producing a debate or for seeing one's name in the papers. Verbal amendments very often embody a difference in expression which is a difference of approach, if not also of the ideal behind. And though we may not all be authorities on English lexicography, we may nevertheless be able to indicate a difference in outlook and a difference in viewpoint, by a change of words, which is not necessarily to be discarded because we happen to be not gifted with the technical skill and the specialised knowledge and experience in legal draftsmanship.

In support of this view, I would further suggest, Sir, that there is ample power in the rules as they stand for the Chair to economise the time of the House, if this is the only reason why an attempt is now made to curtail freedom of speech and the freedom of debate in this House. I suggest that after all we are making a constitution which, we hope, will last for some years; and the attitude which I find so often in many exalted quarters, that after all, there is now full power with us to revise or change it, should not affect our outlook on this matter. It may be that we are not able to maintain the constitution which we draft now for a long period of years. We may have occasion,—circumstances may prove stronger than our desires,—to make changes, and the Constitution which we sit down to draft today may not last as long as we may desire. Nevertheless, I think it is not in the mind of any Member that the constitution which we draft today so solemnly and so seriously should be changed tomorrow, because by lack of foresight, by want of discussion, by the absence of light thrown upon all corners of it, so to say, we were unable to perceive at the right moment all that lurked in the wording of the Constitution, and suddenly we discovered that we had provided for that which was not intended.

Sir, lawyers are a very clever class of people. They necessarily have to be clever, because they are eminently parasitical; they live upon the quarrels, the misfortunes, and tragedies of mankind; and, therefore they would always

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find a way of re-discovering any interpretation, inventing a meaning, providing an outlook which perhaps the original authors of the Constitution never intended. This cannot, of course, be avoided, so long as the legal profession endures in the manner it endures today. But it may at least be safeguarded if we have proper discussion, if all angles of approach, all expressions of opinion are before this House, for it finally to judge in the matter, and take the best that appeals to its sense of fairness and propriety in the matter of the constitution.

Sir, I am unable to follow the reasoning which requires that we must expedite this constitution, and seeks the method of expediting in some such curtailment of the opportunities of debate of the members as we find in this amendment of the Rules. Sir, if you really desire to curtail the time spend upon this matter, I put it to you: why should we not meet twice a day or meet for a longer time, or sit during the summer? Or are we so soft, are we so intent upon comfort and enjoyment to ourselves, that we can only think of meeting in the most fashionable season, in a most comfortable room, most comfortable conditions, and eschew our duty, merely because in the heat of summer or in the midst of social engagements, we will not find it so convenient?

I put it to you, Sir, that if you lengthen the sittings, for instance, if you sit in the afternoons from 3 to 9, you will have a very good evidence as to how many Members ventilate their opinions. See to it, Sir, that you tax our energies properly. See to it Sir, that you make full demands on our enthusiasm, or desire to work for the country through this door; and you will find that only those who are willing to stand the strain will be present. The time will thus be effectively curtailed without any wastage, without any feeling that the minority, or those who may not have the favour of the majority, may be left out of their fair share in shaping this Constitution.

I put it to you, Sir, and to the whole House, that the one and only way to deal with this Constitution, deal with it properly, deal with it satisfactorily, deal with it so that the generations which come behind us may bless us for making it, is to provide proper time and not to curtail the time. If you desire to hurry—and I personally see no reason why we should hurry—you should meet longer, more often, why, even during the time when the Legislature is in session, which body can very well meet at night, and deal with those parts of the constitution which demand detailed knowledge, which require for full discussion not so many broad principles and occasions of declamation, but which necessitate earnest study and detailed knowledge of matters like finance, matters like judicial procedure, and so on.

I do not wish to take the time of the House by enumerating the many sections. Correct expression in each would require not merely a knowledge of English, not merely a mastery of punctuation, not merely appropriateness inform; it would require very much more detailed knowledge of the history and economics of this country, which I venture to think will not be served by your hurrying through the Constitution in the manner which seems to be fashionable and favoured by the majority today. In so doing, I do not think that the majority is serving the interests of the country, if they desire to curtail liberties of speech, if they desire to make rules or amend rules, which will diminish the opportunities we have of placing our views, our outlook, our angle of approach, before this House. Very often, Sir, when we draft amendments in the seclusion of our study, we have only one brain to go by. We come here and see the light of our fellows. When we come here and find other expressions, other angles of approach, are properly backed by facts or reason. I for my part, am quite prepared to say, I would have no hesitation, no shame in revising my own judgment and accepting the wiser judgment of

others. But that cannot be done if that judgment is placed before us without reason, and if it is not illustrated with some facts. If you shut out the means of approach, if you shut out, Sir, the very door of discussion, if you put amendments which are tabled here "without discussion" to vote, you will deny the most elementary right of freedom to speech to Members. But that would mean that you are backed by the brute majority behind you, and not the reasoning intelligentsia of the country with you.

Sir, I would like to put it from another angle. After all, you have very learned technical draftsmen at your service. Ask them, enquire of them, enquire even of this Chairman of the Drafting Committee itself whether other countries, who have had to make their constitution after larger experience than ourselves, have not also taken time over this matter of such vast importance for unborn generations as well as the present? Sir, the Government of India Act itself took several years to get through Parliament, a body which has much greater experience than we may have in making such enactments. The French people had after liberation devoted two years just to the making of the Constitution alone. The American people, when they became free and had only 13 few states with a population not even a hundredth of ours, took two years to pass the constitution, without reckoning all the wrangles that went on before the final Draft was settled from time to time, before they came to the United States, as it is now called.

Sir, I can give you innumerable examples where time has been taken and rightly taken. Why, the fundamental constitution of the country should be studied, should be considered, should be viewed from every angle before it is passed. And that will not be served, I repeat, Sir, by your hurrying through in this manner. If, therefore, it is open to me to move, I would certainly suggest that this matter be referred back to the Drafting Committee itself, or the Steering Committee of this House or whatever the appropriate body may be, to see to this matter. I am not against expediting, getting the constitution as rapidly passed as possible. I am against this being very hurriedly gone through; I am against its being gone through in a slipshod manner, and that is why I suggest to you: Let us discover other ways like more time being devoted to it, and more space being devoted. Let us also remember that we are often reproached with getting our allowances, unearned. I, therefore, suggest, Sir, that the House will do well indeed, if instead of passing a motion like this today, which they can very well pass with a majority pledged to it, you will reconsider the matter, and bring it up again with such amendments in time and so on, if you find there is a desire for obstructiveness for its own sake. That would permit the fullest possible discussion, that would leave no room for anybody to feel that their expression was not fully placed before them and at the same time serve to make the Constitution full, complete and accurate, and much better than attempts like this would let it be. Thank you, Sir.

Prof. Shibban Lal Saksena (United Provinces: General): Mr. Vice-President, Sir, I had given notice of an amendment to the amendment No. 7 of Mr. Kamath; but it has been time-barred and so I will only explain my view point. I had wished that at the end of Mr. Kamath's amendment No. 7, the following words be added: "and clause (a) (3) be deleted."

I have carefully heard the speeches of my friends Mr. Damodar Swarup Seth and Professor K. T. Shah, and other friends. I feel that they are equally earnest about passing this Constitution with all the speed that is possible. At present, the way in which we are proceeding it has taken nine days to pass twenty articles. It comes to about two articles a day on the average. In the Constitution we have got 315 articles and eight Schedules, so that, normally, it should take at this rate about two hundred days to pass the whole Constitution.

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This is the minimum time which I think will be required, because, we all know that during these nine days the Congress Party members have not been moving most of their amendments, and only a very few amendments are moved on their behalf. I do not think that things could be done quicker than they are being done now, and I do not think that there is any possibility of passing this Constitution unless we give at least 200 days for this purpose. There is only one way available to do it quicker and that is by increasing the time of our sittings. Even if we increase the time of the sittings from three hours to five it will take many days still. I personally feel that we are not wasting any time even now, for the time which is saved is used by the Congress Party in selecting the amendments, which amendments to move and which not to move, and in this way, that really saves the time of the House. I do not think there can be any method by which we can go at a quicker rate.

This particular motion of my friend Shrimati Durgabai supposes that some quicker progress is possible by this method; I personally feel that it will not serve this purpose. First of all, we have got Mr. Naziruddin Ahmad who has tabled many amendments of a formal nature; he himself is not moving most of them. Similarly, with regard to the second part of clause (3), which says that amendments which are over-lapping or of a similar import, shall not be moved, I feel that this is something very serious. There may be a number of amendments on a particular subject, and the House may be willing to accept one amendment and not the other selected by the Chair. Although it has been stated that they will be deemed to have been moved. I personally feel that it will not be proper to deem them to have been moved unless they are commended to the House by a speech by the mover. I feel that it would be undemocratic to deem amendments to have been moved without their being moved in the House. Though we are not really saving very great time of the House, we would be giving rise to a justified complaint on behalf of many Members that by this we are trying to gag them. I do not think they will be gagged because you will always allow those amendments which have substance in them to be moved. But, still, it could be complained by those who are opposed to the Congress that they are being hustled and gagged. Therefore, it is my earnest wish to commend to my friend Shrimati Durgabai to reconsider this motion and to see whether it is proper to press it, and whether the real purpose would be served by this motion. I feel very intensely that the Constitution is a permanent thing and as such there should not be any complaint that we are not properly considering it. I hope this motion will be reconsidered and that my remarks will be borne in mind by my friends.

Shri B. N. Munavalli (Bombay States): Mr. Vice-President, Sir, I am in entire agreement with the motion so far as its substance is concerned; but in so far as it curtails the privileges and rights of individual Members of the House, I am constrained to oppose it.

Sir, we have been meeting here and discussing article by article, but we have not been discussing in vain. It is only on important points and important amendments that discussions are taking place. Some of the honourable Members have been wise enough, when they found that their amendments have no substance, to withdraw them. Under these circumstances, I think that by passing this motion, we will be laying down a very bad precedent for the other legislatures to follow. I therefore strongly oppose this motion and appeal to the House, that as a Sovereign Body, the precedents that we lay down are likely to be followed by other legislatures, if we pass this motion; it will be a bad precedent and honourable Members should oppose this motion.

Maulana Hasrat Mohani (United Provinces : Muslim): Sir, I must strongly oppose the motion put forward by Shrimati Durgabai. Even when our President has not got these extraordinary powers such as are suggested in the motion, by experience we have found, by seeing the proceedings of this House, it has given rise to so many misgivings, in the minds of ordinary Members of this House. I may explain what I am saying. I have got here a copy of two whips issued by the Congress Party meeting. Every day before the holding of the session of this House,.....

Mr. Vice-President : They are not supposed to be referred to here.

Maulana Hasrat Mohani : I want to say that everyday.....

Mr. Vice-President : Will you please stop referring to these Congress whips? They are not supposed to be documents to be used here.

Maulana Hasrat Mohani : What I find here is that it appears to be that whatever is decided there is being carried out here to the word. This gives rise to a misgiving on the part of ordinary Members, because it makes the whole thing to be a one-party business, or even I consider one man's show. If that is the case, if we give extraordinary powers to the President, I would be justified in asking the question, where is the use of holding this farce of a Constituent Assembly if it is to be a party business, I mean the business of the Congress Party, or an one man's show?

Shri Algu Rai Shastri (United Provinces : General): *[Mr. President, I thank Shrimati Durgabai for bringing forward a motion to expedite the passage of the Constitution and save our time. I do not agree with my friends who have opposed this motion. I think it is improper to say that the Constitution is being rushed through. We know that it is long since the Constituent Assembly was formed, that it has been given ample time to prepare the Constitution and that a Drafting Committee composed of able persons has been busy preparing this Draft Constitution. We had already accepted its fundamental principles, we had also accepted the Fundamental Rights embodied in the Draft constitution. It does not appear proper to move, at this stage, mere grammatical amendments seeking to insert "the" or to dot the 'I's' or cross the t's in some places in the Draft Constitution. To move such amendments, I think, is sheer injustice to the people at whose expense the entire administrative machinery is functioning. We ought to save every pie and every minute.

I have listened to what my friend Seth Damodar Swarup has just said. Here in this House he says that there should be no hurry in considering the Draft Constitution; while outside the House I have heard these very friends say "The work of framing the Constitution is taking a considerable amount of time. God knows when it will be finalised and elections will be held under the new Constitution". It is necessary and in fact people are anxious that we should finalise the Constitution quickly and hold fresh elections on the basis of adult suffrage, in which every person of the age of twenty one years may exercise his vote and elect his real representative in order that the administration may be under the control of the real representatives of the people, and the administration may justly bear the name of a Popular Government. The present Constituent Assembly has been formed by means of indirect election. People holding views like my friend Seth Damodar Swarup even go to the length of saying that the present Constituent Assembly is a useless body and that it should be dissolved and the Draft Constitution prepared by it should be placed before a fresh Assembly elected on the basis of adult franchise. Seth Damodar Swarup and people of his way of thinking say all these things and at the same time they demand here more and more time for considering this Draft Constitution. The present suggestion, or I should say the motion before

*[] Translation of Hindustani speech.

[Shri Algu Rai Shastri]

the House, may perhaps require modification here and there, but the motion as a whole is a welcome one and I endorse whole-heartedly the object behind it. It confers power on the President to disallow amendments which seek to make merely verbal or grammatical changes—such as comma, semi-colon and such other things. The Drafting Committee itself may effect such changes. The Consultative Committee which sits every day or the other bodies that are there can effect such changes. I said in the very beginning that English is not our language but we have drafted the Constitution in that language. I am afraid we cannot easily detect any grammatical mistakes that might have been committed. It is unnecessary for me to remark that we are not well conversant with its phraseology and other niceties of idioms. A man from England may go on amending this draft throughout his life. We would like this Constitution in English to be repealed and substituted by a constitution written in our own language. It is for this reason that we are unable to make it as perfect as we would like. In so far as the question of improvement of the language of the Draft is concerned there is one difficulty. Pandit Nehru, Dr. Ambedkar and Shri K. M. Munshi are all brilliant masters of English language. But the style of each is marked with his individuality. It is evident that none of us is in a position to judge which of these brilliant styles is correct from the point of view of the English usage, and which words and idioms are appropriate and which are not. I believe the purpose and the meaning in view would be substantially conveyed whatever style we may agree to employ for our purposes. I therefore, submit that amendments aiming to improve the language of the Draft are entirely useless, and we should not waste our time in considering such amendments.

As regards the many amendments which are more or less similar in form or have the same object but have been tabled by different members, I would submit that the House should select one of these and consider it only. We can, I submit, depend in this respect on the discretion of Mr. President. If he declares an amendment to be an all embracing one, which, in his opinion, would enable us to improve the language of the Draft, that amendment may be taken up for consideration by the House. It is true that there must be opportunity for a full expression of opinion, but in my view it is not proper that there should be long-winded speeches or that the proceedings should be unnecessarily prolonged day after day.

I may, in this connection, draw your attention to what the people of India are already saying about us. If you travel in a 3rd class compartment of a railway train you would find what the people think about us, from the disparaging references to the electric fans, the pleasing light, and the other amenities provided to us while we are drawing up a constitution for them.

Shri K. T. Shah gave to us the instances of other countries which devoted two or even three years for framing their constitution. But may I ask how many years have been devoted by us to the same task? Till now, we have devoted two years to it. How is it then people still say that sufficient time has not been given to us to consider and pass our constitution? We must remember that each day we sit here involves an expenditure of thirteen to fourteen thousand rupees of public money—or it may be even twenty-four to twenty-five thousand rupees for all I know. This is the price the country is paying for each sitting of this House. It is plain that we cannot continue to put this heavy financial burden on the poor people of our country. It is well known that our people are not prosperous. We cannot, I submit, continue to tax the slender resources of our people in this manner for a mere idle discussion of the niceties of idioms and words.

One can appreciate, no doubt, the incurring of expenditure on experts or for the purpose of enabling Members of this House to introduce really thought-provoking amendments or to suggest new ideas. It is plain that in this respect there would not be what may be termed 'a gagging order' in this House. No one, I submit, is being stifled in this respect. I submit that the charge levelled here that the expression of opinion is being stifled and that decisions are being taken on the strength of a brute majority is without any substance. There is every opportunity for ample discussion. I submit that it is no use complaining and blaming the country for returning to this House a majority of members of a party whose numerous sacrifices for the people were in the people's minds at the time of elections and which really has the confidence and support of the vast majority of the nation. If we look at Russia we find that the Communist Party has absolute domination over the State. It also controls and carries on the administration. No one, I believe, can condemn the Communist party for this condemnation there can be only when a party begins to act unjustly. But if the party assembles to discuss questions, and if its members come to an unanimous agreement, and if it continues to serve the people, there is no occasion, I submit, for any complaint or criticism. There is complete freedom of expression; really valuable ideas come before us and thereby we are able to make progress in our affairs. The business of the House also is expedited by the party functioning in this manner, and I believe that the country also will be grateful to the party for acting in this manner.

In the circumstances I do not see on what ground people here grumble against this party practice. But even if they grumble, the people approve the practice of the party, discussing questions in its meetings so that its spokesmen may express their opinions in the House and so that the other Members of the party may not indulge in unnecessary speeches and the time of the House may be saved. I submit, that we would be involved in an unending affair and would not be able to make any progress towards the completion of our business, if we listen to those who wish to adopt delaying tactics and to be free to make changes in punctuation marks, as a comma here and a full stop there. In my opinion, such a course would be grossly unfair to our poor people. I believe it will not do to agree to the proposal that Members should be permitted to speak without any restriction or that there should not be a rule—what some Members here refer as 'Section 144'—for the regulation of the debate in the House.

May one enquire what ideas, what wonderful ideas, you are going to place before the House if you get unrestricted freedom of speech? It is clear that Members may move amendments only if these contain some new ideas or some new suggestions which would remove substantial defects in this Draft. I am sure that Mr. President would not prevent anyone here from moving such amendments for improving the Draft. In my opinion the motion which has been brought forward by Shrimati Durgabai only states that only one amendment—and the one which is the most comprehensive—out of several amendments having the same form and object but tabled by different Members, would be permitted to be moved, I believe, under this proposal, every one of those who gave notice of his intention to move any one of such amendments would have full freedom to place before the House any new suggestions he may have, while participating in the debate on the selected amendment. But no one would have freedom to indulge in mere repetition. Repetition is not allowed in any Parliament or Legislature or any where else. I repeat that in no country and in no parliament is there freedom to indulge in 'mere repetition'. There is no reason why this rule should not be enforced here. I, therefore, fully support the motion brought forward by Shrimati Durgabai and totally dissent from those who have opposed it.]

Shri M. Ananthasayanam Ayyangar (Madras : General): Sir, I support the motion made by our friend Shrimati Durgabai. I am afraid Prof. K. T. Shah and other friends who have tabled amendments and who have spoken against this motion have unnecessarily created a panic though there is absolutely no cause for alarm. I am sure they would all agree with me and with the mover of the motion that on merely verbal, formal or grammatical changes, we should not spend much of our time. After all, the same idea can be put in various forms or various shapes endlessly. Are we to go on spending time upon them all? Of course, I agree with Prof. Shah that we should not hustle ourselves. But on important issues, power is given to the President to select such amendments as will cover in substance all the other amendments, and if one such amendment does not cover the substance, two or three or four amendments can be selected by him. We do not restrict his power in this direction at all. He can choose one or more amendments for the purpose of discussion.

Moreover, it is not as if all these amendments are ruled out once and for all. According to Rule 38-R. they are before the committee which will ultimately incorporate them so far as they are found useful, in substance or in improving the language and so on, when the Draft Constitution comes before us for final adoption. This rule that we are bringing in does not take away the efficacy of rule No. 38-R.

Moreover, this is not a novel procedure that we are bringing in. When the Irish Bill was before the House of Commons—and that is the Mother of Parliaments, and it never wants to hustle anybody—they had this rule in the House of Commons, that is Standing Order No. 28, and this present motion which has been placed before this House is copied, word for word, from the Standing Order No. 28 of the Mother of Parliaments. Therefore, it cannot be said that this will stifle discussion, and I am surprised that our friends should unnecessarily get alarmed about it.

Then, as regards substantial propositions, any number of such propositions can come up before us. The President can allow them, and others can be taken to have been moved. It is not as if they are thrown out. The President is not, under this rule, called upon to prevent discussion of important matters. As a matter of fact, he has been allowing them. All the amendments on a particular article are allowed to be moved and discussion is allowed on them and also on the main article. Under these circumstances, where is the necessity for any alarm?

So far as the Congress Party is concerned, it does go through all the amendments and find out what amendments should come up before the House. But with regard to the others, we have noticed how many amendments are being moved. We can spend 50 days or two months or three months on these discussions. But should there not be an end to it? It is true we should not stifle ourselves, but expedition also should be there. We have already spent two years. Of course the opinion of every Member here is absolutely necessary to shape the discussion and the decision of this House. But we all realise that none of us is here to waste time. That is understood by all. But each one of us should know what he should do in the interest of expedition, while at the same time not losing sight of the necessity for discussions on important issues. I would appeal to my friends not to work themselves into a panic regarding this rule which is intended merely to expedite matters, consistently with the efficiency of our discussions.

It has been suggested that we may have sittings both in the morning and in the evening, and if the House is willing, we can have this arrangement from next Monday. But that alone will not be helpful without this rule. I therefore submit that this rule, as proposed by Shrimati Durgabai, should be accepted by the House, without any amendment.

Shri H. V. Kamath : Sir, on a point of information. Is a copy of the Rules of Procedure of the House of Commons, or the particular rule referred to by Mr. Ayyangar before you? Otherwise, I would request him to supply a copy to you.

Mr. Vice-President : Yes, it is here.

Maulana Hasrat Mohani : Sir, may I know, on a point of information whether the particular rule referred to in the Rules of Procedure of the House of Commons relates to ordinary business or to the business of constitution making? I think as far as constitution making is concerned, nowhere in the world is such an obstacle introduced on free discussions.

Mr. Vice-President : Is the Member asking for information or supplying information?

Shrimati G. Durgabai : Mr. Vice-President, Sir, I do not think I should take up the time of the House any more, to answer the charges made against my motion, by some Members of this House. Already, my Honourable friend Mr. Ayyangar has taken the trouble to answer some of the points raised by those Members who opposed my motion. But I consider it necessary to answer one point. I have heard some Members say that this is quite an unusual procedure that we are adopting here. But I submit, there is nothing unusual about it. And just now one Member asked whether the procedure that we now adopt is used only with regard to ordinary Bills or with regard to the business of constitution making. Mr. Ayyangar has already said that the same procedure was adopted under Standing Order No. 28 of the House of Commons with regard to the passage of the Irish Home Rule Bill. Not only that. Even in connection with the passage of the Government of India Act 1935, the same procedure was adopted to expedite the work. There are various kinds of procedures designed to secure the quick disposal of work, and we thought that this one which we have suggested, is the least dangerous, and also the most acceptable to the Members of this House. Therefore, I ventured to bring this motion before you, expecting unanimous consent to its adoption. But all sorts of points have been raised and I have heard Members say that this rule would defeat the principle of democracy and also that it would shut the mouths of Members. I submit there is nothing of that kind in my motion. I have already explained that in moving this amendment, my object was not to curtail the privileges of members. If they would only go through my amendment carefully, they would never find fault with me because it is only discussion of such points which are merely verbal or grammatical that would be affected by this amendment. We have gone through the voluminous lists of amendments and found that many of them are of a merely verbal or grammatical nature. It is only these amendments that will be disallowed. Already rule 38-R is there under which the Drafting Committee can again go through these amendments and if necessary can incorporate them. Therefore all the discussion that has taken place against this amendment is unnecessary, and I appeal to the House to unhesitatingly accept this motion of mine. The President has made it clear that he will be very judicial in exercising his power, and in selecting amendments he will displease no one but please everyone.

Sir, I again appeal to the House to accept this motion.

Shri H. V. Kamath : Sir, my honourable Friend Mr. Ayyangar has sought to mislead the House by quoting rule 28 of the House of Commons. That rule supports amendment No. 16 that I have moved.

Shri M. Ananthasayanam Ayyangar : My friend cannot go on making another speech. If he does not accept it, let him not.

Shri H. V. Kamath : I will with your permission, Sir, read that rule 28.

“In respect of any motion or in respect of any Bill under consideration either in Committee of the whole House or on report Mr. Speaker or in Committee the Chairman of ways and means and the Deputy Chairman shall have power to select new clauses or amendments to be proposed, and may, if he thinks fit, call upon any member who has given notice of an amendment to give such explanation of the object of the amendment as may enable him to form his judgment upon it.” I also want to incorporate it, that every member who has given notice of an amendment.....

Mr. Vice-President : That cannot be done now. But in order to prevent a heated discussion I will take the liberty of going outside my duties and pointing out that this sub-rule (3) does not prevent the President, if of course you have confidence in him to that extent, from making such a request to Members who have submitted amendments.

I shall now start taking votes on the amendments.

An Honourable Member : Does the President already have these powers?

Mr. Vice-President : If he had them there would be no sense in bringing forward this motion.

Mr. Vice-President : The question is:

That the proposed sub-rule (2) of rule 38-P be deleted.

The motion was negatived.

Mr. Vice-President : The question is:

That in the proposed sub-rule (2) of rule 38-P, after the words “President shall”, the words “after hearing the member who has given notice of any amendment” be inserted.

The motion was negatived.

Mr. Vice-President : The question is:

That in the proposed sub-rule (2) of rule 38-P, for the words “shall have the power to” the word “may” be substituted.

The motion was negatived.

Mr. Vice-President : The question is:

That in the proposed sub-rule (2) of rule 38-P, for the word “amendments” the words “such amendments” be substituted.

The motion was negatived.

Mr. Vice-President : The question is:

That in the proposed sub-rule (2) of rule 38-P, the comma after the word “verbal” and the word “grammatical” be deleted.

The motion was negatived.

Mr. Vice President : The question is :

That in the proposed sub-rule (2) of rule 38-P, the words “and to remit them to the Drafting Committee” be added at the end.

The motion was negatived.

Mr. Vice-President : The question is:

That the proposed sub-rule (3) of rule 38-P be deleted.

The motion was negatived.

Mr. Vice-President : The question is:

That in the proposed sub-rule (3) of rule 38-P, for the words “shall also have the power to” the words “may, further,” be substituted.

The motion was negatived.

Mr. Vice-President : The question is:

That in the proposed sub-rule (3) of rule 38-P, for the word “similar” the words “same or similar” be substituted.

The motion was negatived.

Mr. Vice-President : The question is:

That in the proposed sub-rule (3) of rule 38-P, for the word “may” wherever it occurs, the word “shall” be substituted.

The motion was negatived.

Shri Biswanath Das : Sir, I beg leave of the House to withdraw my amendment.

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

Mr. Vice-President : The question is:

That in the proposed sub-rule (3) of rule 38-P, after the words “without discussion” at the end, the following proviso be added:—

“Provided that a member whose amendment has not been so selected for consideration shall, if he so desires, be permitted by the President to state why his amendment should be considered.”

The motion was negatived.

That after the proposed sub-rule (3) of rule 38-P, the following proviso be added:—

“Provided that before the President so selects any amendment, the member who has given notice of any amendment shall have the right to explain the nature and purport of his amendment.”

The motion was negatived.

Mr. Vice-President : The question is:

“That the existing rule 38-P be renumbered as sub-rule(1) of rule 38-P, and to the said rule as so renumbered the following sub-rules be added:

- (2) The President shall have the power to disallow amendments which seek to make merely verbal, grammatical or formal changes.
- (3) The President shall also have the power to select for consideration and voting by the House the more appropriate or comprehensive amendment or amendments out of the amendments of similar import and any such amendment not so selected may, unless withdrawn, be deemed to have been moved and may be put to the vote without discussion.”

The motion was adopted.

Mr. Vice-President : If I may say so, I would appeal to Members to make better use of their time.

Shrimati G. Durgabai : Sir, I move:

“That after Rule 38-V, the following new Rule be inserted:—

Definition.—38-W. In this Chapter (excepting in rules 38-U and 38-V thereof), the expression ‘President’ includes any person for the time being presiding over the Assembly.”

The Honourable President of this House has delegated his powers to the Vice-President on his behalf to exercise all functions under Chapter VI-A of the Rules of Procedure, excepting in regard to Rules 38-U and 38-V. These two rules, I am sure the Honourable Members are aware, relate to authentication of Bills. Excluding these two Rules, the President now has delegated all other powers under Chapter VI-A to the Honourable Vice-President now presiding over the Assembly to exercise all functions on his behalf.

Since it has already taken place, it is considered essential to introduce this new rule and incorporate it in the Rules of the Procedure of this Assembly.

In short, that is the object of my motion. I hope that the House would find no difficulty in accepting it.

Sir, I move:

Mr. Vice-President : We shall now take up the amendments from 18 to 23.

Mr. Naziruddin Ahmad : Sir, I move:

“That the motion relating to the insertion of new rule 38-W be deleted.”

By way of alternative amendment, I move:

“That for the motion relating to the insertion of new rule 38-W the following motion be substituted:—

(b) That after Rule 14, the following new Rule 14-A be inserted:—

Person Presiding to have	“14-A. The person presiding over the Assembly under rules 13 and 14 shall have all
Powers of President in	the powers of the President under Chapter V of these rules except under rules 38-U and
Certain Cases	38-V.”

Sir, I also move:

“That to the new rule 14-A, the following Explanation be added:—

‘Explanation.—This rule shall have retrospective effect as if it was made on the 4th day of November, 1948.’ ”

Sir, I move:

“That in the proposed rule 38-W, for the words ‘any person for the time being presiding over the Assembly’ the words ‘the Chairman’ be substituted.”

Sir, I move:

“That in the proposed rule 38-W, the following Explanation be added:—

‘Explanation.—This rule shall have retrospective effect as if it was made on the 4th day of November 1948.’ ”

Before proceeding further, I want to make one point quite clear. I fully agree with the principle of this amendment and I fully support the principle. But I regret that I cannot accept it in the present form. It is, as I have already indicated, badly conceived and badly drafted, and I shall show how it is so.

Sir, the powers of the Vice-President are described in Rules 13 and 14. Rule 13 says that “in the absence of the President, the Vice-President, as the President may determine, shall preside over the Assembly.” So in the absence of the President, you have been by special nomination or request been presiding over this Assembly.

Then Rule 14 says: “If the President is absent and there is no Vice-President present to preside over the Assembly, the Assembly may choose any member to perform the duties of the Chairman.”

I find there has been a serious lacuna here and this has been rightly spotted by the Honourable Member, Shrimati Durgabai, namely, that the powers of the Vice-President have never been defined anywhere. It has never been stated anywhere that the Vice-President, beyond presiding shall have any powers of deciding matters according to rules. I should have submitted, as I have submitted before, that the provision giving power to the Honourable the Vice-President to preside, includes the power to give rulings, to declare the decisions of the House: and we have been doing that during the absence of the Honourable the permanent President on account of illness. Sir, if however, it is thought that the Honourable the Vice-President, beyond presiding, must according to the rules be deemed not to have any further powers, that he has to sit mute as a silent witness to what is happening in the House without being able to control the debate, to call any Member to order and may do this and may not do that as the presiding officer of the House, then I think one would be going too far. But supposing that is so, that beyond the power to preside you have no further power to act otherwise, that is, to give decisions of the House, give

rulings on points of order. If this is the lacuna, it has to be cured with effect from the date that you began to preside and not with effect from today. If there is a lacuna and it has to be remedied, then the remedy has to be given retrospective effect.

That is in short the effect of my amendment. In fact, I wish to give it retrospective effect: that is one great principle. I think the moment we are disposed to accept the principle of this amendment, retrospectivity follows as a necessary corollary. Then, Sir, the question is, where will you put it? Rules 13 and 14 indicate the powers of the Vice-President and, in the absence of the Vice-President, any person duly elected by the House to preside. I think this is the proper place to insert the provision. I suggest, therefore, that the place of the proposed new rule is after rule 14 as rule 14-A.

Then, supposing, for the sake of argument,—I have to guard against all possible cases—it is felt that the location should not be after rule 14, but exactly at the place where Shrimati Durgabai would place it, that is at 38(W), then retrospectivity must be given by means of amendment No. 23 by means of an explanation that this rule shall have retrospective effect, as if it was made on the 4th day of November, 1948. But 4th is not accurate. I have to put a day in anticipation because on the 4th day of November we began to sit, but you began to preside somewhat later. But if this date is changed from the date on which you began to preside over the House, this amendment should be made. I have taken it a little backward to obviate all objections. But if any objection is taken on the ground of this date I shall accept any amendment that may be suggested. The only reason for not putting the actual date was my ignorance thereof. I submit retrospective effect must be given. If there is no need to make the rule, everything is alright. But if this rule is adopted, then what will happen to the suspected illegality committed by you prior to this date and since you began to preside? I submit the rule is absolutely unnecessary or, in the alternative, it should be given retrospective effect either in rule 14-A or at the place suggested by Shrimati Durgabai with the explanation suggested in my amendment (No. 23). If the House is disposed to accept the amendment moved by Shrimati Durgabai, it should be inserted after the proposed rule 38-W. In any case the Explanation giving retrospectivity must be inserted either here or there.

Mr. Vice-President : The motion and the amendments are now open for discussion.

Shrimati G. Durgabai : Sir, I am sorry I cannot accept the amendments of my Honourable friend Mr. Naziruddin Ahmad, because we have to propose definition of the term 'the President' under the rules. What he said was that after rules 13 and 14, we should bring in 14-A. It has no place, because the term 'the Chairman' in two places has been defined as one presiding over the Assembly. But our purpose is not that. Under Chapter VI-A, the Vice-President has been given the power by the President. Therefore it is necessary to define the term there, and his amendment to bring this as 14-A, after 13-A does not fit in. Therefore I am sorry I cannot accept his amendment.

Mr. Vice-President : I shall now put the amendments, one by one, to vote.

Mr. Naziruddin Ahmad : I am prepared to accept the position as explained by Shrimati Durgabai. But no reply has been given to my arguments in support of amendment No. 23. Supposing we accept the amendment of Shrimati Durgabai, the Explanation would come as in amendment No. 23 in the amendment.

Shrimati G. Durgabai : Sir, I do not think amendment No. 23 is necessary. The explanation is quite unnecessary, because the powers of the President are already there, under delegation.

Mr. Vice-President : Being a negative motion, amendment No. 18 to delete new rule 38-W is out of order.

Mr. Naziruddin Ahmad : I beg leave to withdraw my amendments Nos. 19, 20 and 22.

Amendments Nos. 19, 20 and 22 were, by leave of the Assembly, withdrawn.

Mr. Vice-President : I shall now put amendment No. 23 to vote.

The question is:

“That in the proposed rule 38-W, the following Explanation be added:—

Explanation.—This rule shall have retrospective effect as if it was made on the 4th day of November, 1948.’ ”

The motion was negatived.

Mr. Vice-President : I shall now put the new Rule 38-W to Vote.

The question is:

“That after Rule 38-V, the following new Rule be inserted:-

Definition.—38-W. In this Chapter (excepting in rules 38-U and 38-V thereof), the expression ‘President’ includes any person for the time being presiding over the Assembly.’ ”

The motion was adopted.

Article 8—contd.

Mr. Vice-President : We have a quarter of an hour more. We can resume discussion of article 8 of the Draft Constitution.

Pandit Lakshmi Kanta Maitra (West Bengal : General) : We may adjourn now.

Mr. Vice-President : Our time is valuable. We should not waste a quarter of an hour.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

“That for clause (3) of Article 8, the following be substituted:—

‘(3) In this article—

- (a) the expression ‘law’ includes any Ordinance, order, bye-law, rule, regulation, notification, custom, or usage having the force of law in the territory of India, or any part thereof;
- (b) the expression ‘laws in force’ includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.”

Sir, the reason for bringing in this amendment is this: It will be noticed that in article 8 there are two expressions which occur. In sub-clause (1) of article 8, there occurs the phrase “laws in force”, while in sub-clause(2) the words “any law” occur. In the original draft as submitted to this House, all that was done was to give the definition of the term “law” in sub-clause (3). The term “laws in force” was not defined. This amendment seeks to make good that lacuna. What we have done is to split sub-clause (3) into two parts (a) and (b), (a) contains the definition of the term “law” as embodied in the original sub-clause (3), and (b) gives the definition of the expression “laws in force” which occurs in sub-clause (1) of article 8. I do not think that any more explanation is necessary.

Mr. Mohd. Tahir (Bihar : Muslim) : Sir, I beg to move:

“That in clause (3) of article 8, for the words ‘custom or usage’ the words custom, usage or anything be substituted.”

I do not want to make a long speech. I only want to say that the word “anything” will be more comprehensive if it is used after the word “usage”. It is legal phraseology to say “custom, usage or anything having the force of law”. Dr. Ambedkar has moved another amendment. If that amendment is accepted, I suggest that this amendment also may be accepted by the House. With these words, I move.

Mr. Naziruddin Ahmad : Sir, before I move my amendment, I beg to point out that as a comprehensive amendment has been moved by the honourable Dr. Ambedkar, I think the present amendment should be suitably adapted to apply to that amendment. I wish to move the second part of it only.

Mr. Vice-President : First of all, find out whether he accepts it or not.

Mr. Naziruddin Ahmad : Unless I argue the matter, he will not accept it. I think, Sir, this amendment will have to be accepted.

I beg to move:

That in amendment No. 260 which has been moved by Dr. Ambedkar, the words “custom or usage having the force of law in the territory of India or any part thereof” be deleted.

Mr. Vice-President : How can you add to that amendment without giving notice? It is out of order. You can only make a suggestion.

Mr. Naziruddin Ahmad : I have already given notice of an amendment to the original article. In view of the amendment of Dr. Ambedkar, there should be consequential changes.

Mr. Vice-President : All right.

Mr. Naziruddin Ahmad : Sir, I hate to waste the time of the House, but I wish to ask the House to consider the absurdity that these words which I seek to delete will lead to. The absurdity is that in the first part of clause (3) we say that “law” includes “custom or usage having the force of law in the territory of India or any part thereof”. Regarded apart from the context, this is absolutely unexceptionable. Law must be supposed to include “custom or usage having the force of law”, but we must look to the application of the definition in the context. This must be read along with clause (2) of article 8. In clause (2) it is stated that “the State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void”. I respectfully draw the attention of the House to the word “make” in line 1 and to the word “made” in line 3 of sub-clause (2). Sir, you say that “the State shall not make any law” and also that “law includes custom or usage having the force of law”. Therefore applying the explanation in clause 3(a) to clause (2), what is said is “the State shall not make any law, *i.e.*, ‘make’ “any custom or usage having the force of law”. The point is that “custom or usage having the force of law” is not ‘made’ by anybody. It grows. “Custom” has been defined in the Oxford Dictionary as follows:—

“Custom means in law the usage which by continuance has acquired the force of law or right especially the special use of a locality, trade, society or the like.”

Therefore in no sense a custom is made by the State. A custom is made usually by the people of a locality or a family or group or the like. It is made by continuance of an observance. Here you use the words “the State shall not make any law, *i.e.* custom or usage having the force of law”. Even in independent India the State cannot have any hand in the making of a custom or usage having the force of law. I think these words should be deleted. These are the difficulties which beset me at every stage. I submit, Sir, that these words are not happy in the context and should be deleted.

The Honourable Shri B. G. Kher : (Bombay : General) : Sir, the wording is ‘includes’, not “means”.

Mr. Naziruddin Ahmad : I am very glad for the kind interruption. It does not remove my difficulties at all. Does it mean to say that the State 'makes' a custom or usage? Still you have the difficulty to face that the State has to make a law including custom or usage.

The Honourable Shri B. G. Kher : Of course, it means 'whenever necessary' That is always understood in law. I am sorry to interrupt.

The Honourable Dr. B. R. Ambedkar : Probably he may not find it necessary to continue his speech if I refer to him this fact, namely, that the expression "law" in (3) (a) has reference to law in 8(1).

Mr. Naziruddin Ahmad : I am again grateful for the kind interruption of Dr. Ambedkar that the words 'custom and usage' have the force of law and so forth. This explanation applies also to clause (2), that is, the State shall not make any law. My remarks do not relate to article 8(1) but to 8(2). The difficulty is exactly where it was. I am not wiser, though happier for the kind interruption.

(Amendments Nos. 263 and 264 were not moved).

Mr. Vice-President : Article 8 is now open for general discussion.

Honourable Members : We should like to adjourn now.

Mr. Vice-President : As there seems to be a difference of opinion, the House stands adjourned till 10 o'clock tomorrow.

Shri Satyanarayan Sinha : (Bihar: General): We shall meet on Monday.

Mr. Vice-President : I should have thought that as we were very anxious to have the money of the country, we would also meet on Saturday. The House stands adjourned till 10 o'clock tomorrow.

The Assembly then adjourned till Ten of the Clock on Monday, the 29th November 1948.
