

Wednesday, 5th January, 1949

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**CONSTITUENT ASSEMBLY  
DEBATES  
OFFICIAL REPORT**

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## CONTENTS

Volume VII—4th November 1948 to 8th January 1949

	Pages		Pages
<b>Thursday, 4th November 1948</b>		<b>Thursday, 18th November 1948—</b>	
Presentation of Credentials and signing the Register .....	1	Taking the Pledge and Signing the Register .....	453
Taking of the Pledge .....	1	Draft Constitution—(contd.) .....	453—472
Homage to the Father of the Nation .....	1	[Articles 3 and 4 considered]	
Condolence on the deaths of Quaid-E-Azam Mohammad Ali Jinnah, Shri D.P. Khaitan and Shri D.S. Gurung .....	1	<b>Friday, 19th November 1948—</b>	
Amendments to Constituent Assembly Rules 5-A and 5-B ..	2—12	Draft Constitution—(contd.) .....	473—500
Amendment to the Annexure to the Schedule .....	12—15	[Articles 28 to 30-A considered]	
Addition of New Rule 38V .....	15—17	<b>Monday, 22nd November 1948—</b>	
Programme of Business .....	17—31	Draft Constitution—(contd.) .....	501—527
Motion <i>re</i> Draft Constitution .....	31—47	[Articles 30-A, 31 and 31-A considered]	
Appendices—		<b>Tuesday, 23rd November 1948—</b>	
Appendix “A” .....	48—52	Draft Constitution—(contd.) .....	529—554
Appendix “B” .....	53—100	[Articles 32, 33, 34, 34-A, 35, 36, 37 and 38 considered]	
Appendix “C” .....	101—142	<b>Wednesday, 24th November 1948—</b>	
Appendix “D” .....	143—207	Condolence on the death of Shri Kanya Lal Manana .....	555
<b>Friday, 5th November 1948—</b>		Draft Constitution—(contd.) .....	555—584
Taking the Pledge and Signing the Register .....	209	[Articles 38, Government of India Act, 1935 (Amendment Bill) and articles 38-A and 39 considered]	
Motion <i>re</i> Draft Constitution—(contd.) .....	209—253	<b>Thursday, 25th November 1948—</b>	
<b>Saturday, 6th November 1948—</b>		Draft Constitution—(contd.) .....	585—612
Motion <i>re</i> Draft Constitution—(contd.) .....	255—283	[Articles 39-A, 40, 40-A, and 8 considered]	
Taking the Pledge and Signing the Register .....	284	<b>Friday, 26th November 1948—</b>	
Motion <i>re</i> Draft Constitution (contd.) .....	284—294	Statement <i>re</i> Eire Act .....	613—615
<b>Monday, 8th November 1948—</b>		Addition of Sub-Rule to Rule 38 .....	615—640
Taking the Pledge and Signing the Register .....	295	Draft Constitution—(contd.) .....	640—642
Motion <i>re</i> Draft Constitution—(contd.) .....	295—343	[Article 8 considered]	
<b>Tuesday, 9th November 1948—</b>		<b>Monday, 29th November 1948—</b>	
Draft Constitution—(contd.) .....	345—395	Taking the Pledge and Signing the Register .....	643
<b>Monday, 15th November 1948—</b>		Statement <i>re</i> Future Programme .....	643
Taking the Pledge and Signing the Register .....	397	Draft Constitution—(contd.) .....	643
Draft Constitution—(contd.) .....	397—424	[Article 8 considered]	
[Article 1 considered]		Taking the Pledge and Signing the Register .....	644
<b>Wednesday, 17th November 1948—</b>		Statement <i>re</i> Time of Meetings .....	644
Taking the Pledge and Signing the Register .....	425	Draft Constitution—(contd.) .....	644—670
Draft Constitution—(contd.) .....	425—452	[Articles 8, 8-A, 9, 10, 11, 11-A, and 11-B considered]	
[Article 1 postponed, articles 2 and 3 considered]			

## (ii)

Pages	Pages
<b>Tuesday, 30th November 1948—</b>	<b>Monday, 27th December 1948—</b>
Taking the Pledge and Signing the Register ..... 671	Draft Constitution—(contd.) ..... 1025—1062
Draft Constitution—(contd.) ..... 671—709	[Article 47, New article 47-A, article 48, New article 48-A, and article 49 considered]
[New article 11-B, articles 10 and 12 considered]	<b>Tuesday, 28th December 1948—</b>
<b>Wednesday, 1st December 1948—</b>	Draft Constitution—(contd.) ..... 1063—1098
Draft Constitution—(contd.) ..... 711—747	[Articles 50, 51, New article 51-A, articles 52, 53, 54 and 55 considered]
[Articles 12 and 13 considered]	<b>Wednesday, 29th December 1948—</b>
<b>Thursday, 2nd December 1948—</b>	Taking the Pledge and Signing the Register ..... 1099
Draft Constitution—(contd.) ..... 749—792	Draft Constitution—(contd.) ..... 1099—1127
[Articles 13 and 14 considered]	[Articles 55, 56, 57, 58, 59 and 60 considered]
<b>Friday, 3rd December 1948—</b>	<b>Thursday, 30th December 1948—</b>
Statement <i>re</i> Fire Act ..... 793	Draft Constitution—(contd.) ..... 1129—1165
Draft Constitution—(contd.) ..... 794—822	[Articles 60, 61 and 62 considered]
[Articles 14, 15, 15-A, 16, 17, 18 and New articles 19 to 22 considered]	<b>Friday, 31st December 1948—</b>
<b>Monday, 6th December 1948—</b>	Draft Constitution—(contd.) ..... 1167—1194
Draft Constitution—(contd.) ..... 823—857	[Articles 62 and 62-A considered]
[Articles 19, 14 and 15 considered]	<b>Monday, 3rd January 1949—</b>
<b>Tuesday, 7th December 1948—</b>	Draft Constitution—(contd.) ..... 1195—1231
Draft Constitution—(contd.) ..... 859—894	[Articles 66 and 67 considered]
[Article 20, New article 20-A, articles 21, 22, New article 22-A and article 23 considered]	<b>Tuesday, 4th January 1949—</b>
<b>Wednesday, 8th December 1948—</b>	Draft Constitution—(contd.) ..... 1233—1265
Taking the Pledge and Signing the Register ..... 895	[Article 67 considered]
Draft Constitution—(contd.) ..... 895—927	<b>Wednesday, 5th January 1949—</b>
[Article 23 considered]	Letter from the President ..... 1267
<b>Thursday, 9th December 1948—</b>	Government of India Act (amendment) Bill ..... 1267—1302
Draft Constitution—(contd.) ..... 929—958	<b>Thursday, 6th January 1949—</b>
[New article 23-A and articles 25, 25-A, 26 and 27 considered]	Draft Constitution—(contd.) ..... 1303—1337
<b>Friday, 10th December 1948—</b>	<b>Friday, 7th January 1949—</b>
Draft Constitution—(contd.) ..... 959—989	Draft Constitution—(contd.) ..... 1339—1354
[Article 27-A, New article 40-A, articles 41, 42 and 43 considered]	[Articles 149, 63, 64 and 65 considered]
<b>Monday, 13th December 1948—</b>	<b>Saturday, 8th January 1949—</b>
Draft Constitution—(contd.) ..... 991—1024	Motion <i>re</i> Preparation of Electoral Rolls ..... 1355—1387
[Articles 43, 15, 44, 45 and 46 considered]	Draft Constitution—(contd.) ..... 1387—1391
	[Article 149 considered]

## CONSTITUENT ASSEMBLY OF INDIA

*Wednesday, the 5th January 1949*

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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.

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### LETTER FROM THE PRESIDENT

**Mr. Vice-President** (Dr. H.C. Mookherjee): Before we start the business of the House, I would like to read a letter which I received last evening from our President. This reads:

“I am thankful for your letter conveying to me your and the House’s greetings of the season. I need hardly say how I appreciate such expression of goodwill. I am sorry I could not come even for the last few days of the current session. My plan to start on the first failed because I had fever on the 28th accompanied with severe cough.”

Then he says:

“I hope the House will excuse my absence in the circumstances. I am trying as best as I can to recover but somehow I have had a bad time for several months now. As the season becomes milder and warmer, I hope to improve as I do in all summers.”

With the permission of the House, I would like to reply to this letter to the effect that we hope that he will not only recover but fully recover and will conduct the proceedings of the House in May next when we meet once again.

We now come to item No. 2, motion to be moved by the Honourable Sardar Patel.

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### GOVERNMENT OF INDIA ACT (AMENDMENT) BILL

**The Honourable Sardar Vallabhbhai J. Patel** (Bombay : General) : Sir, I beg to move:

“That the Bill to amend the Government of India Act, 1935, be taken into consideration.”

The measure before the House is a composite one, and in fact it covers a variety of fields of administration. By experience we have found that some changes in these directions are necessary, and in respect of one field, *viz.*, the States, it is found necessary statutorily to recognise the changes that have taken place in the States during the period of last year and also to regularise them. Now, the House is aware— at least many Members who attended the last session of the Assembly must be knowing— that the working of the Trade Disputes Act has created certain anomalies and difficulties. Under the Trade Disputes Act the provinces have set up Industrial Tribunals for the purposes of disposing of disputes. In the working of these Tribunals, decisions have been given by various Tribunals which are not uniform, at least as regards the principles underlying the decisions. This has created complications and there is a general desire that it would be desirable to have uniformity with regard to the principles governing these decisions. Therefore, the suggestion has been made to the Government that a Central Tribunal or Appellate Authority should be established so that the decisions of this Tribunal may set up a sort of Case Law which would be a guidance for the Provincial Tribunals as well as bring about uniformity in the main principles governing their decisions. Now, that is one thing.

[The Honourable Sardar Vallabhbhai J. Patel]

The other thing is that we had consulted the Provincial Governments and they have all agreed more or less in the necessity of a Central Board of Censors for films. In this respect also, the Central Government should have powers and for that purpose also we propose to introduce a sort of amendment in this Act. Both the Provincial Governments and the film industry have welcomed the Central Board of this kind which will lay down principles for uniform treatment of films and ensure that those principles are implemented in actual practice. Also we are experiencing constitutional difficulties in pursuing certain statistical enquiries. For all these reasons, it has become necessary to secure in the executive sphere power in respect of these matters.

We felt that the Dominion Legislature should have the power to confer such executive functions on the Dominion agency by law of the Dominion, and consequently an amendment was also considered necessary under Section 126-A of the Government of India Act, but after further consultation with Provincial Premiers who are naturally jealous of the powers of their legislatures and rightly sensitive to any encroachment on those powers, we propose to introduce with their advice and with their consent, an amendment of a restricted nature which confines itself to certain specific matters.

Again, the industrial policy of the Government of India makes it necessary that the Central Legislature should have powers in respect of a number of other industries. Firstly, these powers can be derived under Section 34 of List I of the Seventh Schedule, but as that gives Government power to legislate only on development, it is doubtful whether in relation to production, supply or distribution similar powers would be available to the Centre. The House will appreciate that, without such power, control on development will be unreal and ineffective. It is therefore proposed in the Bill to make some additions to the Federal legislative list, but subsequently after discussions with the Provincial Premiers to which I have already referred, it was decided to make an alteration in the arrangements contemplated in the Bill and to secure the object which we have in view by including certain matters in the scope of clause 2 as would be amended on the lines mentioned, in the Concurrent List. This would give the Dominion Legislature power to legislate in respect of these industries and also to confer executive power in respect of them.

I now come to clause 3 of the Bill. This amendment is considered necessary on account of the provisions of sub-section (3) of Section 61 of the Government of India Act, according to which the Legislative Councils of the provinces of Madras, Bombay, United Provinces and Bihar are permanent bodies subject to the condition that, as near as may be, one-third of the members of the Councils should retire every third year. The retirement under these provisions was due in United provinces in September last and the elections have already taken place there, but in Madras, Bombay and Bihar they are to take place in March or April. It is considered by those Governments that in view of the likelihood of the new Constitution coming into force in the near future further elections for the Upper Chamber which would become necessary by retirement should be avoided. In these circumstances, we have considered it necessary to take powers to extend the terms of office of members of the Councils who may be due to retire under sub-section (3) of Section 61 of the Government of India Act.

Now, I come to Clause 6 of the Bill. The House knows that as a result of merger agreements which have been signed by rulers, full jurisdiction in regard to administration of twenty five States in Orissa, fifteen States in Central provinces, three States in Madras, thirty five full-powered States and one

hundred and forty semi-jurisdictional States in Bombay, and three States in East Punjab has been handed over to the Government of India who have delegated their powers to the Provincial Governments concerned under the Extra-Provincial Jurisdiction Act which was passed by the Central Legislature. In addition to this, certain States have been taken over by the Central Government and entrusted to officers of the Central Government who have been appointed as Chief Commissioners and these are known as Chief Commissioners' provinces. These are, firstly, the East Punjab Hill States. They are about fifteen to twenty in number,—very small States—which have all been lumped together; and in view of their special condition we have taken them over and formed a Chief Commissioner's province. Other States taken over in this manner are: Cutch, Bilaspur and Mayurbhanj which subsequently been handed over to Orissa. These have been formed as Chief Commissioners' provinces. In the case of Cutch it has been done on account of its special position, namely, that it has a big, long border line with Pakistan and is an undeveloped area neglected for a very long time, with hardly any railway, no modern conveyance, no roads etc., and if you want to see a thousand-year old mediaeval State, Cutch is the only one in India. This State, however, has a first-class major port to be developed and the Government of India propose to spend a large amount of money on it. Then a railway from Cutch—metre gauge—is to be laid connecting it to Deesa. There is also a proposal to have another railway—broad gauge—right up to Viramgam. In these circumstances and because of the long border between the two Dominions, it was considered necessary to take over the State's administration and form a separate Chief Commissioner's province.

The legal position in regard to the administration of these provinces is that laws are made by notification issued in the name of the Chief Commissioner under Section 4 of the Extra-provincial Jurisdiction Act which was passed by the Central Assembly in 1947. The administration is carried on under the provisions of this Act either by the Central Government or the Provincial Governments. It is clear that the process of administrative integration which these agreements were designed to bring about has thus been partially achieved. The laws of the Central Legislature and the appropriate Provincial legislatures do not apply as such to the States which have been merged or which are being administered by these Chief Commissioners. The Finances of these States do not form part of the finances of the Dominion or the province concerned, but have to be kept separately for the time being. So we naturally considered how best we could bring about complete administrative integration, which was the aim and purpose of the merger agreements which have been signed by the rulers and accepted by the Government of India. It was at first thought that this can be done by an order under Section 290 of the Government of India Act by increasing the areas and altering the boundaries of the provinces, but Section 290 makes no mention of the acceding State and it is therefore extremely doubtful whether the Governor General is competent by an order under that Section to direct the integration of the territories of acceding States to the provinces. It is for a variety of reasons that these merger agreements were entered into and the integration of these States should no longer be delayed. It is therefore considered necessary to make in the Government of India Act of 1935 a provision enabling the governance of an acceding State or States, whose rulers have entrusted jurisdiction and power to the Dominion Government, either as part of a Governor's province or as a Chief Commissioner's province. Such a provision is necessary for political, constitutional and administrative reasons. Politically, it will hasten the process of integration and will provide a means for all these areas being represented in the legislatures of the provinces in which they have been merged. At present, although the States have been

[The Honourable Sardar Vallabhbhai J. Patel]

merged, there is no arrangement by which they could be represented in any manner in the provinces concerned. Constitutionally, the provision will enable the Dominion and the Provincial legislatures to have a legal basis for enacting legislation for these areas, and administrative convenience of complete merger is undoubtedly very great. There is also a provision in the Bill for adjustment of territories between a province and a neighbouring acceding State. If such adjustment is considered expedient or necessary for reasons of administration, it cannot be done at present. I might illustrate this by an example. There are about 12½ villages which form the Chief Commissioner's province known as Panth Piploda, of which the House may know. These villages are not at one place and are situated at different places and are in such a position that their administration is practically neglected. The area cannot be governed properly and to have such a small unit of villages situated at different places is, constitutionally speaking, a problem which requires immediate solution. Now, these States, on account of their geographical position and other reasons, can only be properly merged or administered along with Madhya Bharat. They are all situated in the midst of this area.

I hope, Sir, that I have given the House sufficient justification for the measure which I have placed before the House. There are a large number of amendments proposed, particularly to clause 6. The list of amendments for which notice has been given is too long, but I hope I have given sufficient explanation for the justification for the Bill and honourable Members will reconsider them and it will not be necessary for many of them to be moved in the House.

Sir, I move that the Bill be taken into consideration.

**Shri Yudhishtir Misra** (Orissa : States) : Mr. Vice-President, Sir, I want to take part in the general discussion on the motion before the House and make some observations about the provisions of the Bill for the administration of certain States whose rulers have ceded full and exclusive power and authority to the Government of India. According to the provisions of the Bill, some States such as the States which now comprise the Himachal Pradesh will be constituted into a Chief Commissioner's province and other such as the Orissa and Chhattisgarh States, Deccan States and Pudukottah State will be administered as parts of the neighbouring provinces. The integration of the Orissa and Chhattisgarh States took place in January 1948 and since then these States have been under the administration of the provinces of Orissa and Central Provinces. The integration was the result of agreements between the rulers on the one hand and the Government of India on the other. The people of these States or their representatives never came into the picture. They were neither consulted about the process of integration nor was their opinion taken about the actual administration of the States to which they belonged. The right of self-determination has been denied to them as a result of which there is great discontent in these States. The popular opinion in the Orissa States as reflected through the Regional Council affiliated to the All-India States Peoples Conference, was not for unconditional merger. The Orissa States being educationally, politically and economically backward, they apprehended domination and exploitation by the province in services, legislature and in developmental schemes. Hence, their acceptance of the idea of one administration between the States and the province was conditional upon certain terms and conditions which should have been entered into between the people of the States and the province. This idea could not materialise as the people of the States were not taken into confidence and the agreement was purely the affair of the Government of India, the provincial Government and the rulers of the States. The unconditional integration of the States has to a certain extent, reduced the people of the States to subjection and justified the

apprehensions which they had entertained. To all intents and purposes they are treated as conquered people and instead of the Ruler's Raj there is in the States the Raj of the administrators. There is, no doubt, in each State an Advisory Committee, but the advice and suggestions of these Advisory Committees are never taken seriously. There are two Executive Councillors, as far as the Orissa States are concerned, but they are, I submit with all humility, mere show-boys and they are never consulted in important and vital matters.

Sir, in this connection, I beg to bring to the notice of the House that when the question of the personal property of the rulers was considered by the Government of Orissa and an agreement was entered into by the Government of Orissa with the rulers of those States, these Executive Councillors were never consulted and the wishes of the people of the States with respect to the property were never taken into consideration.

No doubt, Sir, certain measures have been taken by the Provincial Government to meet the demands of the States people, but they pale into insignificance in the face of the maladministration in certain cases that has taken place in the wake of integration.

Sir, corruption has increased and there is more exploitation than before. Every village has been converted into a liquor shop and the evils of drinking have increased. The medical grants for the purpose of medicine etc., for the State hospitals have been reduced. The substantial pay of some of the employees of the States, especially the low-paid employees, has been reduced and the primary schools which were managed by the respective State Governments have been converted into stipendiary schools as a result of which the teachers of these primary schools will not get any dearness allowance and the benefit of Provident Fund. In some of the States the road development programmes have been held up.

Now, Sir, it is proposed that besides the privy purse which has been granted to the rulers, the relatives of the rulers will be given some allowances. This idea of granting more allowances to the rulers of the States or their relatives is quite against the wishes of the people and there is no reason why these rulers should be granted more money than has been granted to them under the agreement. But, Sir, even against the wishes of the people, the Provincial Government is prepared to consider their cases. I do not know what has happened to that proposal. Now, Sir, before the integration of the States and after the integration, the Provincial Government had held out certain assurances to the people, saying that the Provincial Government will not reduce the pay, especially of the low-paid employees of the States and that the education and other amenities which the people were enjoying will not suffer in the hands of the Provincial Government, but in many cases these assurances have been falsified and the Provincial Government have not kept the promises which they held out to the people before integration.

Now, Sir, I submit that it is the duty of the Central Government to see that the States area should be given certain priorities in the developmental works by the Provincial Government and that the people of the States do not lose the little amenities of life which they were then enjoying. Therefore, I should have personally liked that before handing over the administration of the States to the Provincial Government, as is contemplated in the Bill, the Government of India should have instituted an enquiry into the present administration of the States and should have ascertained that nothing is done against the interests of any section of the people of the States.

Sir, in the amending Bill, a provision has been made to consult the Provincial Government for the purpose of passing orders by the Governor-General making the States parts of the province, but no provision has been made to



[Shri Yudhishtir Misra]

ascertain the views of the people. When the fate of the people of the States is going to be decided, it is meet and proper that the people of the States should also be consulted. If it is not possible for the Government of India to accept this suggestion, at least the popular organisations of these States should be consulted, before the orders are passed, about the manner in which the States will form a part of the province.

Now, Sir, I think that for the interim period, before the new Constitution is adopted and passed, the representatives from the States should be consulted on all the problems which are special to them and that the administration should be carried on according to the advice of those representatives.

Sir, if no constitutional guarantees can be given to the people of the States, as I have suggested, I submit, that before making the order under the proposed Section 290-A, the Governor-General should give some directions to the province to act according to the advice of the representatives of the States on certain special problems.

**Shri Ram Chandra Upadhyaya** (Matsya Union) : \*[Mr. Vice-President, as a representative of the people of the State, I welcome this amending Bill. In particular I support the amendment now being proposed in Section 6. I believe that it would be in the interest of the people. I, therefore, desire to make some observations in order to refute the remarks made in this connection by Shri Yudhishtir Misra. I may state that in my opinion this amendment is very much in our interest, and that if would not pay us if we begin to give too much importance to minor individual or group interests. Not many days ago the problem of the States was considered to be so difficult of solution that on the departure of the foreign rulers from this country the people of other lands seriously apprehended that India would be crushed out of existence under the heavy load of these States. It is a matter of deep congratulation, however, for the Government of India that it has felt the necessity of adding a new section, *i.e.*, Section 290-A, to the Government of India Act. It shows what great progress we have been able to make during this period of one year. It is my belief that we would soon be able to settle even the few matters that remain. I may in this connection draw your attention to what I consider to be a special feature of this Act, and it is the following:—

“Where full and exclusive authority, jurisdiction, and powers for and in relation to the Government of any Indian State or of any group of such States are for the time being exercisable by the Dominion Government the Governor-General may by order direct.”

I believe that the shortest path that the people of the States need follow for securing a complete and final solution of the problem of the States is to induce the Princes of their States to transfer all their powers to the Government of India. A number of States, as Sardar Patel has already informed us, have agreed to adopt this course, but there are also quite a number of States who have not agreed to do so. I think, that after what has happened in Hyderabad, no Prince would dare raise objections to the adoption of this course of action. I have, however, apprehensions about the attitude of the new class of rulers—the class consisting of Popular Leaders—that is now emerging in the Indian States. What we have read about Bhopal is a matter of regret to us today as it was even before. Many of the political workers and popular leaders of the Indian States believe that they would be able to maintain their leading position only if the small States are permitted to maintain their separate existence. But in my opinion it is a grave mistake on their

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\* [ ] Translation of Hindustani speech.

part to entertain such a belief, and they are thus hampering the unification of India. It is a matter of great amazement that such people should hold the belief that a petty State like Bhopal can maintain its separate existence. Still more amazing is that traitors like Chaturnarayan Malaviya should hold the idea that they can maintain their leadership through the separate existence of such a small State as Bhopal. I have also come across a similar statement about the leaders of Tehri Garhwal. But if we desire to make India great and glorious it is our duty to disabuse the minds of our political workers of such notions. It has already been made clear by Sardar Patel and it is also plain to all of us that the Princes can no more stand in the way of the progress of India. At such a time it would be matter of deep regret if anyone of us put new obstacles in the path of India's progress. It is for this reason that I would like to emphasise again that it is our duty to define our objectives clearly and precisely.

Another feature of this section to which I would like to draw your attention is the provision for the transformation of some States into Chief Commissioners' provinces. I think that this is also a correct course to follow. I believe that we shall have to merge the States to form Chief Commissioners' or Governors' Provinces before we can merge them with the Indian Union. There are some people who claim that popular opinion should be ascertained before the adoption of this course. But in my opinion, if this was to be done the progress of the country would be considerably delayed. I am afraid that plebiscite or referendum for this purpose would not be very useful, because the people of the States are so backward at the present time that they would not be able correctly to appreciate the issues involved and would not consequently favour the right course of action. India is taking big strides in the direction of progress. But her march towards progress would be retarded if we the people of the State begin to hold a referendum. I, therefore, urge that we should not insist on these claims. In my opinion it would be quite sufficient if the views of the Congress Party in each States are ascertained and acted upon in the matter of the merger of the States with one another. Any attempt to consult a wider section of opinion is likely to create serious complications.

Shri Yudhishtir Misra has remarked that in view of the unsatisfactory way in which the administrations of many of the States are working now-a-days one begins to entertain the opinion that the people were much better of before than what they are or would be when the proposals now being made for their welfare have been carried out. It cannot be doubted that previously when there were small States the people had some conveniences arising from the fact that the High Courts and the administrative headquarters were, on account of their proximity to the people, easily accessible to them. They could run to them and speedily secure the redress of their grievances. But this facility would no more be available to the people on the merger of a State with a big province. People, no doubt, attach quite a great importance to this facility. But it appears to me that we should not give any importance to our petty gains or losses of this kind in order that India, our country may prosper and progress.

We should rather think of the advantages we would have six months hence. It is only in our taking a long and not a short view of our interests that the good of India lies.]

**Mr. Vice-President :** You are not obeying the Bell.

**Shri Ram Chandra Upadhyaya :** \*[It is quite possible that we may have difficulties for some times as a result of the merger of a State with any province.

For instance, if Dholpur or Bharatpur merge with the United Provinces, their people will have to travel a great distance in order to reach Lucknow or Allahabad. But we should remember that the other people of that province have also to travel great distances for the same purpose. I, therefore, submit that ignoring these minor inconveniences, we should concentrate our attention

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\* [ ] Translation of Hindustani speech.

[Shri Ram Chandra Upadhyaya]

only on the ways and means which would enable us to make our future glorious and bright and which would prove the most fruitful for us. I believe, in view of the above considerations, that Section 6, in the form it is drafted, is quite appropriate. We should, ignoring for the time being our petty difficulties, adopt it without any amendment.]

**Shri B. H. Khardekar** (Kolhapur) : Mr. Vice-President, Sir, I welcome this Bill. Actually it was overdue. This Bill will put an end to the anomalous position that has been created in the case of certain merged States. Of course, there are a few defects in the Bill. I will point them out later on.

First, Sir, I will make a few general observations and then discuss particulars. You know, Sir, the Englishmen left India .....

**Mr. Vice-President** : I suggest that the honourable Member refer to these clauses merely and that he could take part in the general discussion on the several clauses, especially clause 6 which is concerned directly with the States. In that way, we shall save the time of the House.

**Shri B. H. Khardekar** : Yes, Sir. I come to particulars. Sir, it is, now about eleven months since some of the States have merged; and because there was no such enactment, they could not be absorbed into the provinces. This Bill rights the wrong which has been there for a long time. In a short time, I will describe the nature of the wrong that was there. For these ten or eleven months, in most of the States, there has been what might be called the Administrator's autocratic rule. The disadvantages, some of them, of the provincial Governments crept in whereas the advantages could not be had. I shall give one notable instance, that of education. Particularly in one State, as also perhaps in several others, education in the last regime was entirely free, right from the primary up to M. A. and M.Sc. After the merger, fees have been imposed. As against that the teachers' salaries have unfortunately remained the same. Let me in a minute or two describe the nature of the Administrator's rule in general. These Administrators, most of them in all the important places, have been members of the old I.C.S. In our school we interpreted the I.C.S. as one who is neither Indian, nor civil nor a servant. Today, of course, he is mostly Indian, but the other description fits him. In most of the States, political life of whatever nature it was came to an end suddenly. In place of the old autocrat,—the old autocratic Rulers had ceased to be autocratic because some sort of constitutional rule was introduced—this new official autocrat came in. Sir, I will describe briefly the state of affairs in one State. Section 144 of the Criminal Procedure Code prevails permanently and there also partially was to be found and a certain group allowed certain facilities. There have been arrests, detentions, detentions without limit, for eight or nine months. That is why, Sir, most of the members here, who love personal liberty were very anxious that the expression 'without due process of law' should be included in article 15. A number of papers which even indirectly criticised or attempted to criticise the Administrator have been banned. The language of the civil servant is anything but civil. He uses such expressions as, "I will shoot you; I will imprison you; I will extern you, your family and your children". Such uncivilised bullies, unfortunately, bring discredit to the Government they represent. A certain high official was not only dismissed without powers, but he was actually served with a notice of externment. The position of that high official is very very high indeed. He is a former minister of a Provincial Government; he was a member of the Constituent Assembly and so on and so forth. If I am to use Parliamentary language and yet use the strongest expression, I would say, Sir, that this regime is the opposite of heaven. I would request the States Ministry to enquire into the conduct of such officials. I know that such officials, in some cases, came in, had to come in, as a result of certain

“*pagal*” ministries; but representatives of Government should not try to surpass the “*pagal*” ministry itself.

A defect in this particular Bill is that the provinces are to be consulted as regards the absorption of certain States; but the people of the States are not to be consulted. Self-determination is the very essence of democracy. If you are going to deprive the people of choosing their own province or Chief Commissioner's Province, you are really denying democracy itself. And that is why I would, when the time comes, support Pandit Thakur Dass's amendment. Now, Sir, I have a few words to say about the policy the Government of India have followed as regards merger. To Sardar Patel the Nation owes a great debt of gratitude for having made the map of India better, clearer and cleaner; but there has been certain misunderstanding as also certain defects in the policy of merger. The declared policy of the Government of India is that a State should merge only when the Ruler and the people so desire. First, I have my theoretical objection to this policy because we have declared the people to be the sovereign. Now suppose there is an obstinate Ruler who does not want to give away his rights as a Ruler and the people desire merger—as in most cases it might be so—what are we going to do? Then by some underhand methods we may have to persuade him. That is not proper. Then the other position is, most of the Rulers have suddenly become very patriotic and because they look more to their monetary financial interests they have decided to be loyal to the Indian Union; these persons who were enemies of the country and the people formerly, persons to whom the name of Gandhiji was something that infuriated them, persons for whom the very sight of Gandhi cap gave severe headache, such persons have become patriotic all of a sudden and have agreed to merge. I am not grudging this epithet which has been used by Sardar Patel to these people. After all in conducting State administration, some statesmanship is necessary and where a goat is to be sacrificed, it must be fed previously; so, where the States are to be wiped out, they may be flattered for a time. In this case what of the people? I want a very clear declaration on the point. Ultimately all States must go. I do not want relics of barbarism and feudalism to remain anywhere in this country. But the process of merger should be such that when the States are swallowed, no bitterness is left in the mouth and the merger should be for the happiness and for the good of all. So my recipe or my humble suggestion to Sardar Patel in this important matter—I know he is a very great man and he is a very practical politician—but as a youngster looking up to an elder with deep reverence and respect, I wish to throw a few humble suggestions. Sir, for the States—viable states which have not yet merged, a date should be fixed for the plebiscite. The people must be consulted; that is what I think; and three months previously the Ruler of the State concerned should be humbly advised to leave the State and go to some foreign country—Europe or America; let him enjoy himself. Then after a short time Sardar Patel should pay a flying visit to the State, discuss matters in a friendly manner with the leaders of public opinion. That would be half the battle won. India, I think has got a magic weapon in the moral and spiritual armoury of the country and that magic weapon or mantra is Pandit Nehru. Just before the plebiscite Pandit Nehru should be persuaded to pay a flying visit and deliver a short lecture. I dare say there is not a single Indian heart that can possibly resist Pandit Nehru; by such means, by proper means—after all those of us who believe in Gandhism, we should not only have laudable and proper ends but our means also must be proper. So even when we are trying to do away with relics of feudalism, let our means be worthy of the Father of the Nation.

**Shri Rohini Kumar Chaudhari** (Assam : General): Mr. Vice-President, Sir, in my opinion the question which is to be considered by the House is not so much the merits of the provisions of this Bill, but the question is one of

[Shri Rohini Kumar Chaudhari]

principle as to how far will you allow the Dominion Government to interfere in the provincial affairs. I quite admit, Sir that in cases of emergency, it is expedient and not only expedient but desirable that the Dominion Government should have the right of interference and we have to consider how far these provisions of this Bill have kept within its limits, reasonable limits of interference or whether at any time the powers which have been sought to be exercised by virtue of this Bill are liable to be abused and cause discontent in the administration of provinces. Sir, there have been a number of amendments to this Bill before us. I can safely predict that most of these amendments will not be moved and much less carried, excepting perhaps in the case of my honourable Friend the Premier of U.P. whose weight, I believe, will enable him to carry some of his amendments. I find a curious coincidence so far as the amendments to this Bill are concerned. I find most of the clauses are not wanted by some member or the other. For instance, clause 1 is not wanted and there is an amendment for deletion of this clause by no less a person than my Friends Mr. Krishnamachari and Mr. Bharathi. Deletion of clause 2 is wanted by the Honourable Pandit Pant and deletion of clause 3 is wanted by my honourable Friends Mr. Chaliha and Mr. Lakshminarayan Sahu. Deletion of clause 4 is wanted by Rai Bahadur Lala Raj Kanwar. Deletion of clause 5 is wanted by the honourable Pandit Kunzru. Deletion of clause 6 is wanted by Rai Bahadur Lala Raj Kanwar. Deletion of sub clauses (b) and (c) of clause 7 is wanted by Mr. T.T. Krishnamachari. Therefore, Sir, if you are going to allow all these movers of amendments to have their way, very little will be left of the Bill itself. (*Laughter*). It seems to me, Sir that the only clause which is wanted by the Members of this House is sub-clause (a) of clause.....

**Mr. Vice-President :** How do you find that all the Members will want to have even that?

**Shri Rohini Kumar Chaudhari :** I find all the other clauses are not wanted by one Member or the other clauses are not wanted by one Member or the other and so.....

**Mr. Vice-President :** Then all that you can logically infer is that ten persons do not want seven clauses. As I was taught in my school days, this is what one would call the dangerous inductive leap.

**Shri Rohini Kumar Chaudhari :** That is quite correct, Sir. This is a Bill of seven clauses, six of which are not wanted by some one or the other and so the only clause which the House unanimously desires to consider is sub-clause (a) of clause 7, in respect of which there has been no amendment for deletion.

**Shri T. T. Krishnamachari (Madras: General):** Not correct.

**Shri Rohini Kumar Chaudhari :** And therefore, Sir, ...

**Mr. Vice-President :** An honourable Member says that even that statement is not correct.

**Shri Rohini Kumar Chaudhari :** May be so but in any case that is the most important provision of this Bill, and I would warmly support the proposal of the provision contained in this Bill to the effect that the development of industries should be left, in deserving cases, in the hands of the Dominion Government. I have watched with close interest the process of development of industries in the various provinces, and I have to say it with regret that if this matter had been left entirely in the hands of the Dominion Government, we could have seen greater development of our industries even within the short time in which the National Government has been functioning. Therefore, I have not the least hesitation to support that clause, I mean that portion of the clause, where development of industries has been sought to be

taken entirely by the Government of India. But I do not agree to the latter portion of this clause, namely, that trade and commerce within a province, and production and supply of goods, should at any time be left entirely under the control of the Government of India. I am of the opinion that as far as the production and supply of particular commodities are concerned, no restrictions should be imposed upon their supply to a province, if they do not want it or if they would like to have it substituted by some other article, It may seem as if I am anticipating matters, but all the same, I humbly submit that the proposal which has been mentioned in the amendment proposed to be moved by my honourable Friend Pandit Pant should receive the support of the entire House, and the Provinces should be left free to exercise their own discretion in the matter of trade and commerce in a province in which the industry exists.

With these words, I wish to close my remarks.

**Mr. Vice-President :** Mr. Naziruddin Ahmad.

**Mr. Naziruddin Ahmad** (West Bengal: Muslim): Mr. Vice-President, Sir, I am in general agreement with the principles of the Bill, except as to a single point, and that is in regard to a portion of clause 6.

**Mr. Vice-President :** If that is so, may I appeal to you not to take more than five minutes?

**Mr. Naziruddin Ahmad :** Sir, five minutes will be more than amply sufficient for me.

Sir, with regard to this clause, all that I object to is as to the provision for incorporating certain acceding States *as part* of a Governor's Province, or of a Chief Commissioner's Province. Sir, it is not on political considerations that I raise this point, but purely on legal considerations. It should be noted that the Honourable Mover of the Bill when he introduced it, he was simple Sardar Patel, but today I am happy to feel that he is already a Doctor of Law, a degree which he richly deserves, and I believe the legal considerations which I shall submit before him will receive his personal consideration.

Some of the States have acceded and have transferred their right of management or 'administration' of these States to the Dominion Government to be '*administered*' in any manner they please, and through any agency they please. My point is and I shall develop it later on at the appropriate stage, that this concession on the Part of the Rulers of those States, to allow the *administration* of the States, does not include the power to convert these States, into so many Provinces and incorporate them as parts of a Province so as to absolutely lose their identity or their integrity. That is a kind of power which has not been given by the agreement.

**Shri M. Ananthasayanam Ayyangar** (Madras : General) It is only "as if" such area formed part of.....".

**Mr. Naziruddin Ahmad :** I have noted the words "as if". But even then, it assumes powers which as I shall submit later on, cannot be justified by constitutional considerations.

Sir, these States were absolutely free when the British left. The only relation between these States and India would be dependent upon an agreement or the Instrument of Accession or Supplementary Instrument of Accession. There has already been an Instrument of Accession and later on, a fresh agreement delivering the right of management of these States to the Government of India. But in conceding power of *administration* of these States, the power to incorporate them into a Province and to put them together in a manner which will make it impossible for anyone to separate them later on, I submit, has not been given and would be beyond to separate beyond the scope

[Mr. Naziruddin Ahmad]

of the agreement. The whole situation, as I shall submit later on, is a question of construction of the second agreement.

Sir, at this stage, I do not desire to take up the time of the House and elaborate the point. With these few words, I support the general principles of the Bill all through, except that portion of it to which I have referred.

**Maulana Hasrat Mohani** (United Provinces : Muslim) : Sir, I think that if my honourable Friend, Sardar Patel, is determined to put the cart before the horse and you are determined to support him in this view, I am afraid there is no occasion to discuss this Bill now, considering the Objectives Resolution of this Assembly which definitely stated—

“This Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent, Sovereign Republic.....”

Sir, I submit that the whole of the Government of India Act of 1935 is based upon a foolish theory of the dominion-hood of India. Every word of that Act is based upon that theory, and if we have to carry out our determination and achieve the objects set out in Objectives Resolution, I think there is no occasion, and it will be simply a waste of time and energy—to discuss this wretched thing, the Government of India Act, 1935. Where is the use of it ? Of course, if we have got some secret understanding that you have resolved that in spite of you declaring yourselves a Republic, you will remain within the British Commonwealth, and if you are going to coin some new phrase as I said sometime ago, if you say that you will be a republic dominion, as Holland is, proposing to do with Indonesia, and if that Republic will remain in the arms of the Commonwealth, we will be making fools of ourselves. If we accept this Bill, we may become a Republic, but ours will be a republican dominion. We will still be staying within the ‘British Commonwealth. Sir, even if the word ‘British’ is dropped from the British Commonwealth’, the position will be no better, because, if we remain in the Commonwealth it will mean that we will have to co-operate with the other nations thereof. Once we begin this, we will have to co-operate with the Western Bloc or the Western European nations. This will be something very bad. It will mean that we will have to co-operate with Holland and Belgium and with the rest of the Western Bloc which has been formed with the express purpose of opposing Soviet Russia. If a war breaks out in future between the Anglo-American Bloc and the other side, we will have to co-operate with the Western Bloc. It will mean that we say good-bye to our determination to remain neutral in any future world war. It will mean that we give up everything for which we have stood for. If we say at this stage that we are going to leave the British Commonwealth and if we say that we will become a republic, there will remain no link of the British Crown. If there is no link of the British Crown, then what will be the basis of our remaining within the British Commonwealth? People say it will be on the basis of common citizenship and that the first citizen will be the British King. Sir, to this I say that when we see the attitude of South Africa, New Zealand and Canada, it is absolutely futile to accept any common citizenship— Therefore I say that we will have nothing to do with any citizenship common citizenship or first citizenship. We will have no longer anything to do with this tom-foolery. Therefore if we are determined to establish a Republic in India, by all means attempt to introduce it and reject the 1935 Act and everything connected with the dominionhood of India. Everything else is futile and absolutely irregular. I say it is immoral to do any other thing at this stage.

Sir, I wanted to say this in the beginning when my Friend the Honourable Sardar Patel introduced this Bill. I wanted to oppose him in the beginning. But unfortunately you, Sir, did not catch my meaning, ruled me out of order and put my opposition to the vote without giving me any chance to express myself. I take this chance of expressing myself. For the reasons given

above, I request my honourable Friend Sardar Patel not to waste time and energy on such a wretched thing as the Government of India Act, 1935.

**Shri T. T. Krishnamachari** : Sir, I move that the question be now put.

**Mr. Vice-President** : I think we have devoted sufficient time to the general discussion. Altogether seven honourable Members belonging to different parts of India, including the States people who I understand are vitally concerned with the Bill, have spoken. I shall now put the question.

Does Sardar Patel wish to give any kind of reply ?

The closure is of course, accepted.

**The Honourable Sardar Vallabhbhai J. Patel**: Sir, there have been a few speeches on this measure, but all of them were restricted to the provisions which relate to the States. In other respects there has been no discussion at all, and I take it there will be hardly any time spent on those clauses.

Sir, so far as clause 6, which affects the States, is concerned, I find from the general tenor of the speeches that those who spoke supported more or less in every way, the general principles of the Bill. Some of the criticisms were, to my mind, irrelevant in the sense that some of them questioned the manner in which the merger has taken place, and some related to the question of changes in the administration adversely affecting the area which has been merged. For instance, an honourable Member from Orissa who first spoke, while supporting the measure, complained about some changes that have been brought about by the merger in the area of the State administration. He pointed out that some of the facilities they were getting when the area was administered by the ruler were not being given, after the merger, by the Orissa Government. It is quite possible and conceivable that a benevolent ruler might have spent some more money for the good of the people in that area and that the Orissa Government might not have found it possible to do so in that particular area in that particular form. I may say that the whole idea of merger, as conceived, is not to keep small bits of territories separately for the purpose of administration. When a merger has taken place it is possible that they may lose some smaller or minor advantages. But the whole idea is to look at it from a broader point of view and to have a better administration on the whole and to bring backward areas to the level of the provincial administration. Now, when you want a larger good to be obtained, it is quite conceivable that you may have to make smaller sacrifices. But when it is proposed to merge these areas, the smaller sacrifices should not be considered worthy of complaint. Otherwise merger would be impossible.

Now, the honourable Member from Alwar talked about Bhopal.

**Shri Biswanath Das** (Orissa : General); I am not rising to a point of order. On a point of information may I ask the Honourable Minister for States whether it is not a fact that the Government of Orissa have in this year's budget allotted fifty lakhs of rupees for the benefit of this very state over and above the income derived there from ? May I know whether this information is correct ?

**The Honourable Sardar Vallabhbhai J. Patel** : That is really supporting what I have already stated that they may make smaller sacrifices but get larger good. If the Orissa Government has provided large sums of money in their budget for these areas, there is nothing very surprising in it. Indeed they are expected to do so, and if the Orissa Government takes care that the interests of these small areas are looked after properly which I have no doubt they will do, this complaint which is based on an apprehension will soon disappear. Therefore the honourable Member who first spoke on this question will take note of the fact that the Orissa Government is anxious to give all facilities and perhaps more than they were getting when the administration worked as a smaller unit.



[The Honourable Sardar Vallabhbhai J. Patel]

Now, referring to the question which was raised by the Honourable Member from Alwar about Bhopal, I do not wish to say anything about questions which are not yet settled and which are under discussion as any discussion of the question may result in prejudicing such issues. But I have already assured all that if the people of any State want a merger or want to join the Union, there will hardly be any strong objection from any rules because I do not conceive the possibility of the existence of smaller units against the wishes of the people. So, if the people of Bhopal want union or merger with any adjoining area, I have no doubt that the Ruler or the Nawab of Bhopal will not come in the way, because after all in this age no Ruler can safely defy the wishes of his people. That is really the idea of democracy; and when we are now beginning a democratic form of Government all over India, smaller units cannot stand if there is such a severe conflict between the Ruler and the ruled. The fault lies not with the Ruler but with the people themselves. You know that wherever ministries are formed even in the smaller units, ministries create a sort of vested interest and the ministers are not willing to merge and are stronger in their will to remain separate than the Ruler himself. So a general discussion about the question of merger of the States that remain now is not very advisable. It is better to work among the people of the States than to raise the question here, but you can trust us to do all that is possible to bring about uniformity all over India with the consent of the Rulers as well as the ruled. There will be no obstacle if all people consider the interests of the people concerned instead of their own personal short-sighted interests of office or vested interests.

Now the honourable Member from Kolhapur raised several controversial issues so far as the administration of Kolhapur is concerned. I do not think it would be wishes to go into the administrative routine and the difficulties of that administration at this stage. Perhaps the House is aware of the Committee of Enquiry which was appointed by the Government of India to go into the administration of this State, presided over by a Judge of the High Court of Bombay. The Report of Justice Coyajee has already been published and I would request those honourable Members who come from the States and who are interested in this affair to read that report. It is a very sad state of things which has been described in that report. After the unfortunate incident of the murder of Mahatma Gandhi, a group of people took it into their heads to harass and molest people called Brahmins in that area, because a Brahmin young man was supposed to be responsible for that murder. A whole family bearing that name was burnt alive. Several houses of the Brahmins were burnt, property looted and tremendous persecution and torture was practised on a large scale. There was a popular Ministry at the time. There was no administrator at the time. Our friend from Kolhapur said that the administration of the administrator who was a Civil Servant was the opposite of heaven in Parliamentary language. You ask those people who suffered during the days of persecution whether what he described as a popular government was really heaven or hell of the worst type. I do not think we would be justified in being proud of our democracy if popular administrations behave in this manner. It is a very sad thing. We appointed an administrator with the consent of the Prince. The Prince asked for an administrator. That report condemns the Ministers. I do not wish to proceed further in the matter. What he says is that a time should be fixed by which a plebiscite can be taken of the people of Kolhapur for the merger. Evidently from his speech I gather that he is against merger. Well, we are not forcing merger on the people of any area or any State if the people do not want merger. If the people stand for merger at one time and at another time for keeping the State separate, if they want

merger if there is no ministry and are against merger if they are in the ministry, it is not easy to take a plebiscite, there is a danger of terrorising people and practising criminal acts of violence on a very large scale. I can assure the House that no State has been merged against the wishes of the people and there have been no complaints in the case of any merger up till now. In future also there will be no complaints from any quarter except those who stand out against the general wishes of the people of that area for personal reasons. Whatever we have done up till now has been done with the will and the free will of the Princes as well as of the people of that area. I can say this also, that some of the Princes, smaller Princes, who first signed the merger agreement, long time afterwards on second thought complained, perhaps on some advice given to them by some lawyers, and wanted to question the merger agreement in court. I advised them not to waste money over lawyers and courts and that if they wanted to go back on the merger agreement, I would tear up the merger papers and allow them to go but that they should not return and come to me for safety or security. When I accepted their merger, it was at a time when I had to give them protection because the administration that they were carrying on in those areas was so unpleasant that the people in some cases took possession of the palaces. Therefore, the question of a merger now is not very important because most of the States have either formed unions or have merged and there are those that have remained out. There are Princes who, if they are convinced that it is in the interest of the country as a whole that they should make further sacrifices, will be prepared to do so. If there is any Prince who takes a recalcitrant attitude, then it will not be for me to do anything in the matter. It will be between him and the people to settle accounts.

Therefore, to the honourable Member who has come from Kolhapur, I give this warning: that I do believe that a large majority of the people of Kolhapur wants a merger, and if I can convince the Prince or the Ruler for a merger, then those who stand out against the merger will have no mercy later on. When the world is progressing rapidly, people who put obstacles will have to find out other venues than this.

We want to finish this process of removing these administrative ulcers in the country in small bits, on account of which we have so many difficulties. I appeal to all those who come from those areas to be more reasonable and more sensible and not to talk of what was being done in the past. Here my friend quotes examples of his administration of the education department in his time when there was no administration in Kolhapur. A little efficiency in education in his time is nothing when we see the miseries through which the people have had to pass recently. But after all, what is going to happen after the merger? As it is, it is going to be merged in the Bombay Province. At any rate Kolhapur will have to admit that merger with the province of Bombay is not going to bring about inferiority or in efficiency of administration.

Now there is our Friend, Mr. Naziruddin Ahmad, who is afraid of the administrative entity being destroyed or the State's entity being destroyed. I do not know whether he is a legal objection or just qualms of conscience. But I would say that with regard to the States that have merged, the Rulers and the people have voluntarily ceded all their administrative jurisdictions. Except for the privy purse and certain other rights about their prestige and position which have been secured to them, the rest has been ceded to us and there is no illegality involved in them. If he says that the people have not been consulted, I will ask him to point out one place where this is so. If people do not complain, it is because we have ascertained the wishes in the form in which wishes can be ascertained in this area. You will admit that there are no electoral rolls. There is nothing in that form to ascertain the wishes, except keeping your fingers on the pulse of the people and it is for this that there is no complaint from them.

[The Honourable Sardar Vallabhbhai J. Patel]

Now, there is our Friend, Mr. Rohini Kumar Chaudhari, who in his analysis of the amendments has negated the whole Bill. I need not say anything about that. But he has referred to only one question—that of the Industrial Bill and he supports it. So it requires no answer.

I do not know whether I can say anything about Maulana Hasrat Mohani. Now that he finds that this House is not supporting him and is not exercising its own sovereignty which he claims, it will be against his conscience to sit in the House. He had better not take part in its proceedings which do not conform with his principles.

**Maulana Hasrat Mohani :** I will not allow you to have your way. I am here for that purpose.

**The Honourable Sardar Vallabhbhai J. Patel:** That is all I have to say. I am glad that the House has supported the Bill generally and we may now proceed to discuss the amendments.

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

“That the Bill to amend the Government of India Act, 1935, be taken into consideration at once.”

The motion was adopted.

**Mr. Vice-President :** I find that there is an amendment, No. 4, in the name of Shri T. T. Krishnamachari and Shri L. Krishnaswami Bharathi and also that there are two amendments to this amendment.

**Shri T. T. Krishnamachari :** With your permission and the permission of the House I would like to move amendment No. 1 in the supplementary list instead of No. 4 in the original list. Sir, I move:

“That after clause 1, the following clause be inserted:

Interpretation—

‘1A. The Interpretation Act, 1889, applies for the interpretation of this Act as it applies for the interpretation of an Act of Parliament.’ ”

This is more or less a formal amendment in that it provides for the interpretation of this Act. The Act that is referred to have happens to be the Interpretation Act of 1889 of Great Britain. Originally as the Government of India Act stood, because it was enacted by the British Houses of Parliament, this Interpretation Act applied. But in the present setting this Act will not apply unless special mention is made in the body of the Bill to that effect. I therefore hope that the House will accept the amendment.

**Mr. Vice-President :** The next amendment is in the name of Mr. Naziruddin Ahmad.

**Mr. Naziruddin Ahmad :** Sir, with your permission and the leave of the House, I would like to move my amendment in a modified form, which is consequential upon a change in the original motion. I desire to move an amendment to the motion put to the House by Shri T. T. Krishnamachari namely, that Clause 1-A be inserted in the form in which it appears in the supplementary list No. 1. I shall not move for the deletion of the whole clause but only the latter half. Sir, I move:

“That in amendment No. 1 in the supplementary List, in the proposed Clause 1-A, the words ‘as it applies for the interpretation of an Act of Parliament’ be deleted.”

In deleting these words I fully support the principle that the Interpretation Act of 1889 should apply to the interpretation of this Act. In fact this amendment really removes an anomaly. To all Parliamentary Acts the Interpretation

Act of 1889 applies and therefore it applies to the Government of India Act also. But the present Bill says nothing to indicate in the Bill as to what Interpretation Act would apply,—the British Act or the Indian General Clauses Act. It is doubtful if the latter Act applies to the Bill. This amendment really removes this doubt. The words which I desire to delete are merely arguments in support of the operative part of the clause. The clause with the amendment would read:

“1-A. The Interpretation Act, 1889, applies for the interpretation of this Act.”

I submit that this is quite enough. The last part “as it applies for the interpretation of an Act of Parliament” merely supplies an argument or a descriptive clause. As no argument or descriptive clause of this nature is permissible in a legislative enactment these words should be deleted, not that the argument or the explanation is invalid,—the argument or the explanation is quite proper—but this should be removed from the effective part of the clause. I hope that the House would consider this point.

**The Honourable Shri B. G. Kher** (Bombay: General): Sir, the honourable Mover of the amendment has not given the reason in his amendment but has indicated the manner in which the Interpretation Act applies. “As” means “in the same manner as”. The honourable Member, Mr. Naziruddin Ahmad has understood the word “as” in the sense of “because”, as if the mover of the original motion had intended to give an argument.

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

“That after clause 1, the following clause be inserted:—

‘1-A. The Interpretation Act, 1889, applies for the interpretation of this Act as it applies for the interpretation of an Act of Parliament.’ ”

The motion was adopted.

**Mr. Vice-President** : Since the House has adopted the first amendment it means that the House negatives the second one in the name of Mr. Naziruddin Ahmad. I shall now put clause 1-A to the House:

The question is:

“That clause 1-A stand part of the Bill.”

The motion was adopted.

Clause 1-A was added to the Bill.

**The Honourable Dr. Syama Prasad Mukerjee** (West Bengal : General): Sir, I beg to move:—

“That for clause 2, the following be substituted :

‘2. *Amendment of section 8 of the Government of India Act, 1935—*

In section 8 of the said Act,—

(a) in clause (i) of the proviso to sub-section (1); after the words ‘in this Act’ the words ‘or in any law made by the Dominion Legislature with respect to any of the matters specified in the next succeeding sub-section’ shall be inserted; and

(b) after sub-section (1), the following sub-section shall be inserted, namely:—

(1-A) The matters referred to in clause (i) of the proviso to sub-section (1) of this article are—

- (a) industrial and labour disputes;
- (b) trade and commerce in, and production, supply and distribution of, products of industries the development of which is declared by Dominion law to be expedient in the public interest;
- (c) the sanctioning of cinematographic films for exhibition; and
- (d) inquiries and statistics for the purpose of any of the matters in the Concurrent Legislative List.’ ”

[The Honourable Dr. Syama Prasad Mukerjee]

Sir, when clause 2 was inserted as drafted, the idea of the Government was that in respect of the entire Concurrent List it should be open to the Dominion Legislature to pass laws for the purpose of exercising executive function. At present so far as the Concurrent List is concerned the Dominion Legislature may pass laws which will supersede any laws passed by the provinces; but so far as executive authority goes, it can be discharged only by the provincial governments. In the new constitution, under article 60 which has already been adopted, it has been laid down that even with regard to the Concurrent List it will be open to the Dominion Parliament to pass laws for the purpose of exercising executive action. The question arose whether any such powers should be taken over by the Dominion Parliament during the interim period. At present under the Government of India Act, the Dominion Parliament and the Dominion Government can exercise authority in respect of matters which normally fall in the Concurrent List in three ways. We have the Essential Supplies Commodities Act which relates to certain specific commodities such as food stuffs and certain other commodities in respect of which the Dominion Parliament and the Dominion Government have complete legislative and executive powers. This power will lapse in 1951. Secondly, we have a provision which lays down that development of industries which, in the opinion of the Dominion Parliament, is of all-India importance, can be taken up by the Dominion Parliament. But that relates only to the development of any industry which may be so described by the Dominion Parliament. It has been felt that in respect of industrial development it is not sufficient that the Dominion Parliament or the Dominion Government should have power only for the purpose of developing industries which are deemed to be of an all-India importance. Development has been interpreted to exclude regulation and control of such industries and also trade and commerce in such industries, control of production and distribution of the products of such industries. For that purpose it was first thought expedient that wide powers might be taken by the Dominion Parliament even during the interim period by a suitable amendment of the Government of India Act. Apart from industrial development there were certain other matters like statistics, censoring of films and also industrial disputes, in respect of which it was thought desirable that the Central Government should take adequate powers.

So far as industrial and labour disputes are concerned, as has been explained by Sardar Patel, this is a Provincial subject, but it has been felt desirable that there should be some uniformity of legislation followed by necessary executive action with regard to the industrial tribunals which may be constituted under Provincial laws for the purpose of settling disputes. After consultation with the Provincial Government and some of the Provincial Premiers, and representatives of Provincial Governments who were present in Delhi, it has been deemed desirable that during the interim period completely wide powers need not be taken over by the Government of India, but a suitable amendment may be made only in respect of those particular items which are now of an urgent character and which require an immediate solution. For this purpose, you will find from Amendment No. 9 that we have referred to industrial and labour disputes, trade and commerce in, and production, supply and distribution of, products of industries the development of which is declared by Dominion law to be expedient in the public interest: the sanctioning of cinematographic films for exhibition; and inquiries and statistics for the purpose of any of the matters in the Concurrent Legislative List. This will mean a consequential change in clause 7, as originally provided in the Bill. The latter portion of clause (a) will be omitted and put in the Concurrent List. The result will be that so far as legislative powers are concerned, the Dominion Parliament will have ample

powers to pass laws wherever necessary and such laws will supersede provincial laws, if any; so far as the executive authority is concerned in respect of these matters, it will also be open to the Dominion Parliament to pass laws and take over responsibility for executive administration, in case such a step is considered to be desirable or necessary. Sir, it is not intended that the Provincial Governments should not be utilised for purposes of co-ordinating the policy of the Central Government even in respect of those matters where central regulation and control are necessary in the interests of the whole country. Obviously in normal circumstances, the executive machinery, which will be utilised, will be the Provincial Governments themselves. But if an occasion arises when it is necessary for the Central Government to exercise executive authority in respect of matters, which are considered to be of an all-India importance, power to do so has to be taken over by the Government of India and the Dominion Parliament. A question has arisen whether this power should be exercised by the Dominion Legislature without consultation with the Provincial Governments. Hitherto whenever the Central Government or the Dominion Legislature had an occasion to take steps for introducing legislation for development of industries, previous consultations did take place with the Provincial Governments. I believe on a suitable occasion when the matter comes up a little while later, Sardar Patel will give an assurance on behalf of the Government that during the interim period before the new Constitution comes into force, if it is necessary for the Central Government to move in accordance with the powers which are now proposed to be taken under Amendment No. 9, previous consultation with Provincial Governments will always be held and the results of such consultation will be placed before the Legislature for information.

With these words, Sir, I move that the amendment be accepted.

**Mr. Vice-President :** There are four amendments to this amendment, which I shall call out one after another. The first is by Mr. Naziruddin Ahmad. No. 3 in the list.

**Mr. Naziruddin Ahmad :** It is only a formal amendment and therefore, I am not moving it.

**Shri T. T. Krishnamachari :** Mr. Vice-President, Sir, I move:

“That in the new clause 2 proposed for substitution by amendment No. 9 of the original list of amendments, for the words ‘said Act’ the words, figure and brackets ‘Government of India Act, 1935 (hereinafter referred to as the said Act)’ be substituted.”

This is a formal amendment, which makes the amendment moved by my honourable Friend Dr. Syama Prasad Mukerjee complete. I hope the House will accept it.

**Pandit Hirday Nath Kunzru (United Provinces : General) :** Sir, it is unnecessary for me to move my amendment in view of the amendment moved by Dr. Syama Prasad Mukerjee.

**Mr. Vice-President :** Clause 2 is now open for general discussion. Pandit Kunzru will kindly come to the mike.

**Pandit Hirday Nath Kunzru :** Mr. Vice-President, the Statement of Objects and Reasons appended to the Bill before us asks for more executive power for the Government of India in the interest of the establishment of uniform principles with regard to the review of awards made by the Provincial and Central industrial tribunals. Sardar Patel, in asking that the Bill be taken into consideration also dwelt on this matter only. I think, therefore, that I am justified in concluding that this is the only reason for which Sardar Patel is asking that the Dominion Legislature should have power to confer

[Pandit Hirday Nath Kunzru]

executive functions on Central officials in connection with laws relating to the concurrent field.

It is obvious, Sir, when one reads the amendment proposed in the Bill that it goes far beyond the needs of the case. The question that is being discussed now was raised by me in connection with article 60 of the Draft Constitution which was discussed the other day. My honourable Friend Dr. Ambedkar was unable to accept my point of view and in the course of an excellent speech gave what he thought were convincing reasons against the acceptance of my amendment. This Bill only seeks to bring the Government of India Act in line with the Draft Constitution. I should have thought therefore that the matter had been finally decided by the Constituent Assembly and that it would not come up for consideration again. It seems now, however, that the House is prepared to accept the point of view, that I fruitlessly urged the other day, in connection with the amendment of the Government of India Act, 1935. I do not know, Sir, whether the Provincial Governments will be able to enjoy the freedom that they seek to have only till the Draft Constitution comes into force or whether the amendment moved by my honourable Friend Dr. Syama Prasad Mukerjee means that the House is prepared to revise its opinion in connection with article 60 of the Draft Constitution. For my part, Sir, I welcome the amendment moved by Dr. Mukerjee.

Sir, Dr. Ambedkar said the other day in the course of his speech to which I have referred that it was necessary that the Dominion legislature should be in a position to pass laws extending the executive power of the Dominion officials to matters relating to the concurrent field. To explain what he meant he referred to any legislation that the Centre might pass in regard to untouchability and the failure of the provincial Governments to give effect to the Child Marriage Restraint Act. It is undoubtedly desirable that when the Central Legislature passes a measure it should be loyally given effect to by all the provinces. But, it is quite possible that in some provinces there may be little sympathy with a measure that has found favour with the Central Legislature. My honourable Friend Dr. Ambedkar said that in such a case it was eminently desirable that the Central Legislature should be able to authorise the Central officials to see that the law passed by it was properly executed.

**Shri T. T. Krishnamachari:** Not always.

**Pandit Hirday Nath Kunzru :** I have referred only to the two illustrations given by Dr. Ambedkar and I do not think that I have so far unfairly summarised his arguments.

Sir, I think that if the Central Government went so far as to appoint officials of its own to give effect to anti-untouchability laws or the Child Marriage Restraint Act, it would find itself in a serious predicament. The magnitude of the task would, I think, be beyond its powers and the consequences of its coming into conflict with provincial Governments would be so unwelcome that I am certain that any power that the Dominion legislature may have to authorise the Dominion officials to execute certain laws relating to the concurrent field is not likely to be exercised in practice. My honourable Friend Dr. Ambedkar referred to the case of Australia in respect of which I had made an erroneous statement. I accept Dr. Ambedkar's correction. But although the Commonwealth Government in Australia can ask its own officers to execute laws passed by it even in the concurrent field. Australia is, in respect of population, a very small country. I am not aware that in practice, in matters of any importance, it has actually asked the Commonwealth officials to execute laws that it should be the proper responsibility of the States

Governments to enforce. In a country like India, Sir, though the Union legislature may be authorised to confer executive functions as respects laws relating to the concurrent field on Dominion officials, the size and population of the country would render it virtually impossible to put such a law into practice. I think, therefore, that the amendment moved by Dr. Syama Prasad Mukerjee is timely. It reminds the House that it is going too far in its desire to have a strong Centre. We all desire a strong Centre. We do not want that the Central authority should be unable to enforce obedience to its laws in vital matters. The unity and integrity of India depend on the authority and prestige of the Central Government. But there is a limit that must be set to the powers of the Union Legislature and the Union Government. We should not in pursuance of a theory make ourselves responsible for a policy that might lead to serious consequences. It seems to me that the amendment moved by Dr. Syama Prasad Mukerjee is going to be accepted by the House, but I hope that its acceptance will lead to a reconsideration of the decision the House has already arrived at in connection with article 60 of the Draft Constitution.

**Shri B. Das** (Orissa : General): Sir, I was all along unhappy since this Bill was circulated, that this Bill should try to incorporate absolute executive powers which the British Government took in its hands since 1939 in one shape or other. Consequently, Sir, I welcome the amendment which my friend Dr. Syama Prasad Mukerjee has moved whereby the executive power has been restricted. I am glad he has the support of Pandit Govind Ballabh Pant and that the amendment was jointly tabled by my honourable Friends Pandit Pant and Dr. S. P. Mukerjee. Sir, I think the House is very restive over any encroachment of democracy inside the Government as well as outside the Government. This is not the first occasion on which I have spoken of that reprehensible measure—Section 126-A of the Government of India Act, 1935, which the British House of Commons passed in 1939 and gave retrospective effect to it from 1937. Clause 2 wants to incorporate one of the original sub-paragraphs of Section 126-A. Clause 5 wants to incorporate another sub-section of that reprehensible measure passed in the House of Commons after the War in 1939.

Sir, democracy is under trial and it is particularly under trial in a new Sovereign State like India. The foreign rulers ruled India and looked at India through Section 126-A. I cannot understand how the legal advisers of the Government of India or even how the Constitutional Adviser of this august Assembly advised that in peace time Section 126-A in its various forms should be incorporated in the first Sovereign Bill that this Sovereign House is going to pass. It was a great surprise to me and it gave me great pain. Today I feel relieved that Dr. Mukerjee had voiced the differences which the Government of India has itself had and I wholeheartedly support the motion. I hope later on my friend Pandit Pant will move the other amendment to delete clause 5. I am happy this Sovereign House is functioning as a democratic legislature and not going to give its Government autocratic powers that are required in time of war and not in time of peace.

**The Honourable Pandit Govind Ballabh Pant** (United Provinces : General): Sir, I had given notice of a similar amendment. In fact my name is coupled with that of Dr. Syama Prasad Mukerjee with regard to the amendment which he moved a few minutes ago. I consider it necessary to make a few observations as my reasons for giving notice of the same and identical amendment may not be identical with his. So while welcoming and supporting this amendment, I should like to state why I have considered it necessary to do so.

Section 8 of the Government of India Act gave the Federal Centre the power to appoint its own executive organization only with regard to matters included in List I. Every Federal structure involves distribution of legislative



[The Honourable Pandit Govind Ballabh Pant]

and executive functions, powers and duties. The jurisdiction of each organ, so far as it may be possible, has to be earmarked and demarcated. We have under our Constitution now agreed to the fundamental basis of a Federal structure. In 1935 too, when that Act was passed, a Federation consisting of provinces and States was envisaged. The powers of the Federation were defined and also those of the provinces or the States that were to form its component parts. As honourable Members are doubtless aware, three lists were prepared. List I dealt with Central subjects with regard to which the Centre had the power to legislate and to have its own agency and machinery for their execution. List II contained provincial subjects and provinces alone had the authority to pass the laws and to appoint suitable agency for their administration. Besides these two, there was a Concurrent List and it is with reference to that List that this amendment has been proposed. Now the Concurrent List was essentially concerned with provincial subjects, *i.e.* subjects which were considered to be appropriate for purposes of legislation as well as execution of these laws by the provinces themselves. But some exception was made in order to secure uniformity in the matter of legislation where such uniformity might be considered desirable. Under the scheme of that Act—and our Constitution is modelled on that Act for the most part,—the Centre has no executive authority with regard to Concurrent subjects. It could issue directives to provinces but it could not appoint its own agents in order to execute the laws that came within the purview of List III. That is why this amendment has been moved. Thus under the scheme of the 1935 Act so far as List III was concerned, the Centre had an overriding legislative authority but it had no executive authority beyond this that it could issue directives.

Now, the original clause of this Bill made a very wide provision. It intended to give power to the Centre to appoint its own agency for the execution of any or all the subjects mentioned in the Concurrent List. That is hardly possible and altogether improbable, because it is not conceivable that the Centre could administer all the subjects that are included in the Concurrent List, in all the Provinces of India. That is beyond the capacity of even the most resourceful and powerful Centre. It would have led to a great deal of confusion, if we had two parallel agencies and machineries in the provinces to deal with matters that came within the purview of the Concurrent List. The Concurrent List includes criminal law, it includes civil law, it includes arbitration. It includes also miscellaneous subjects such as boilers, engines and so on and so forth. Now, if we had parallel agencies appointed on the one hand by the Provinces and on the other by the Centre, for the execution of laws relating to these matters, then there would be confusion and chaos and no government would be able to function with efficiency. That is why under the original scheme of the 1935 Act, the duty of carrying out the laws relating to the subjects included in the Concurrent List was imposed exclusively on the provinces, because thus alone could orderly administration of those subjects be ensured. I personally feel and think, that that was a prudent arrangement. That was desirable. But all the same, the art of government is a practical one and adjustments have to be made from time to time; only whatever we do must conduce to greater efficiency, to greater economy, to greater public good and greater convenience. All these should be taken into account. So I would not altogether exclude the possibility of sometimes arrangements being made by the Centre for administering the subjects which at present might be included in the Concurrent List. So, so far as the general principle is concerned, I believe, the present Government of India accepts it, that concurrent subjects should ordinarily be administered by the Provinces. It is also, I think, accepted that no change should be made in the

present system of administration except with the consent and, if I may say so, the concurrence of the provinces. We on our part, are ever ready to place ourselves at the disposal of the Centre. In fact there is no occasion for any conflict now; and howsoever much one may feel that another course might perhaps be preferable, if the Centre takes a decision, one does not only reconcile oneself to it, but I for one would think that that is the only right decision, and I am, perhaps, in the wrong. That may be the case, even with respect to this particular clause. But now when we made the analysis of the provisions of this clause, we found that the reasons given for it in the Statement of Objects and Reasons only suggested the appointment of judges of appellate industrial courts in order to settle labour and industrial disputes. Honourable Members might have seen the amendments that I notified previously on the basis of that Statement of Objects and Reasons. I had suggested that in the circumstances, you might make a change in the lists, so as to meet the exigencies of the present situation. When I discussed the matter with the Honourable Home Minister, and the Honourable Minister for Industries and the Honourable Minister for Labour, we found that besides this one matter, there were two or three others also with regard to which they thought that it would be desirable to make some provision, although they had not been mentioned in the Statement of Objects and Reasons. So this amendment was recast. On the one hand, it upholds the principle that with regard to concurrent subjects, the executive authority would ordinarily vest in the provinces. On the other hand, it also accepts that there may be occasions when it may be necessary to make a departure, and it may be necessary for the Centre to step in and even to appoint its own agency and machinery. I do not yet know whether the Centre will actually do so. If I may submit with great humility, there are two sides to the shield, and some times, the Centre sees one and the provinces perhaps see the other. So one may look at one side of the shield and not attach any importance to the other side. But the advantages of one side may be more than out-balanced by the disadvantages of the other. So, unless we take a balanced view of the whole thing, it is difficult to say that the net advantage lies in any particular course that might suggest itself to any Honourable Minister who may be in charge of a particular subject. I do not suggest that in the case of the particular subjects that are mentioned in these amendments there may be such difficulties. But I do think that the basic principle should be adhered to. Otherwise it will lead to confusion. So the position with which some of us were confronted was this, that this Bill had contemplated an over-riding executive authority in the Centre with regard to concurrent subjects. Well, that as I said, seemed to me, to be against the basic principle of the Government of India as well as of the pivotal principle of a federal structure. So some way out had to be found. On the other hand there was the experience of the Honourable Ministers at the Centre who had found that their powers with regard to these particular subjects were not adequate enough to enable them to discharge their duties and obligations satisfactorily. So we hit upon this compromise, that with regard to these subjects, the powers should be conferred on the Centre. Now, that power does not by itself enable the Centre to appoint executive agents, but it gives them the option to bring such a measure in this House and if this House approves of it, then it will be open to them to appoint their own agents. I believe that it will still be simpler and easier if they were to appoint the Provincial Governments themselves as their agents for administering these subjects. We are there in the provinces to carry out their wishes which to use are no less than behests. Whatever communications we get from the Centre, we try our best to give effect to the directions and even to the hints contained in them and it will be our privilege to do so even in future. I hope, however, that things will be arranged in such a manner that there will be no occasion for any confusion. What I am afraid of is confusion in the matter of administration. In the field of administration

[The Honourable Pandit Govind Ballabh Pant]

there should be no overlapping so far as it can be avoided. The ambit of provincial autonomy has been clearly defined. All the spheres of provincial administration, whether legislative, executive or judicial, should remain untampered with, so that responsibility may be imposed on the provinces and their sense of responsibility may not be impaired. On the other hand, after all, as I said we have to be guided by practical considerations and no theories can be allowed to override the demands of the actual hard realities of the day.

So, while supporting this amendment, I express the hope that there will be no desire to impose any fresh executive on the provinces and that the utmost use will be made of the provinces even in the execution of laws that may be framed with regard to these subjects.

**Mr. Vice-President :** Does Sardar Patel wish to offer any remarks?

**The Honourable Sardar Vallabhbhai J. Patel :** No, Sir. These are agreed proposals.

**Mr. Vice-President :** Then I shall put the question.

The question is:

“That clause 2 as amended by amendment No. 9 and further modified by Amendment No. 4 do form part of the Bill.”

I am sorry I find I have to put amendment No. 4 to vote first.

The question is:

“That in the new clause 2 proposed for substitution by amendment No. 9 of the list of amendments, for the words ‘said Act’ the words, figure and brackets ‘Government of India Act, 1935 (hereinafter referred to as the said Act)’ be substituted.”

The amendment was adopted.

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

“That for clause 2, the following be substituted :

‘2. *Amendment of section 8 of the Government of India Act, 1935—*

In section 8 of the said Act,—

(a) in the clause (i) of the proviso to sub-section (1), after the words ‘in this Act’ the words ‘or in any law made by the Dominion Legislature with respect to any of the matters specified in the next succeeding sub-section’ shall be inserted; and

(b) after sub-section (1), the following sub-section shall be inserted, namely:—

(1-A) The matters referred to in clause (i) of the proviso to sub-section (1) of this section are—

- (a) industrial and labour disputes;
- (b) trade and commerce in, and production, supply and distribution of, products of industries the development of which is declared by Dominion law to be expedient in the public interest;
- (c) the sanctioning of cinematographic films for exhibition; and
- (d) inquiries and statistics for the purpose of any of the matters in the Concurrent Legislative List.’ ”

The amendment was adopted.

**Mr. Vice-President :** I shall now put clause 2, as amended, to the vote of the House.

The question is:

“That clause 2, as amended, stand part of the Bill.”

The motion was adopted.

Clause 2, as amended, was added to the Bill.

**Mr. Vice-President :** The House will now take up clause 3 for consideration.

Amendment No. 15 standing in the name of Shri Kuladhar Chaliha has the effect of a negative vote. It is therefore disallowed. The first alternative in amendment No. 16 standing in the name of Shri T. Prakasam also has the effect of a negative vote and is therefore disallowed. Shri Prakasam may move the second alternative in amendment No. 16. I understand that the mover does not want to move it. The next three amendments to this clause, Nos. 17, 18 and 19, I understand are also not moved.

I shall now put clause 3 to vote.

The question is:

“That clause 3 stand part of the Bill.”

The motion was adopted.

Clause 3 was added to the Bill.

**Mr. Vice-President :** The House will take up clause 4 for consideration.

Amendment No. 20 standing in the name of Rai Bahadur Lala Raj Kanwar is disallowed as having the effect of a negative vote.

The next two amendments, Nos. 21 and 22, I understand, are not being moved.

I shall now put clause 4 to the vote of the House.

The question is:

“That clause 4 stand part of the Bill.”

The motion was adopted.

Clause 4 was added to the Bill.

**Mr. Vice-President :** Now we come to amendment No. 23 standing in the name of the Honourable Pandit Govind Ballabh Pant.

**The Honourable Pandit Govind Ballabh Pant :** Sir, I am just moving the amendment, but I will not take much time. I beg to move:

“That after clause 4, the following new clause be inserted:—

4-A. *Insertion of new section 108-A.*—Before section 109 in Chapter II of Part V of the said Act, the following section shall be inserted, namely:—

108-A. No Bill or amendment providing for the exercise of the executive authority of the Dominion with respect to any of the matters specified in sub-section (1-A) of section 8 shall be introduced or moved in the Dominion Legislature except with the Previous sanction of Governor-General for certain legislative proposals. 8 shall be introduced or moved in the Dominion Legislature except with the previous sanction of the Governor-General, and the Governor-General shall not give his sanction to the introduction of any such Bill or the moving of any such amendment unless he is satisfied that the views of the Governments of the Provinces and the Acceding States concerned have been ascertained.’ ”

Sir, I have only suggested in this amendment that before any Bill or any amendment is introduced in the House with regard to the matters mentioned in section 8 or in clause 2 which we have just passed, the provinces should be consulted, that there should be a certificate to that effect and that the papers relating to such correspondence should be placed on the table. I do not want to take the time of the House by any lengthy speech in support of this amendment. The substance of this amendment is, I believe, acceptable to the Honourable the Home Minister. So far as the form is concerned, I do not

[The Honourable Pandit Govind Ballabh Pant]

worry too much about it. So, if he will be pleased to accept in substance what this amendment proposes, I will be prepared to withdraw it in form. With these words I propose this amendment.

**Mr. Vice-President :** There is an amendment to this amendment.

**Shri T. T. Krishnamachari :** That is not being moved.

**The Honourable Sardar Vallabhbhai J. Patel:** I entirely agree with the Honourable Pandit Pant with regard to the substance of this amendment. I therefore give him an assurance that no Bill will be introduced in the Legislature at the Centre of the nature mentioned without giving a reasonable opportunity to the provinces for giving their opinion. Therefore it would be quite appropriate if he withdraws the amendment.

**The Honourable Pandit Govind Ballabh Pant :** With the leave of the House I withdraw the amendment.

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

**Mr. Vice-President :** Now we come to clause 5. Amendment No. 24 is that the clause be deleted and it is therefore disallowed. Amendment No. 28 standing in the name of Mr. Naziruddin Ahmad.

**Mr. Naziruddin Ahmad :** Sir, I beg to move:

“That in clause 5, at the end of the proposed section 126-A, the following be added .....”

**Shri T. T. Krishnamachari :** Mr. Vice-President, Sir, may I suggest that since the intention of the mover of the Bill is to ask for this clause to be withdrawn, this amendment is not necessary and need not be moved.

**The Honourable Sardar Vallabhbhai J. Patel:** We have accepted a change in clause 2 and so there is no point in keeping clause 5. I think it may be deleted.

**Mr. Vice-President :** The motion is:

“That clause 5 stand part of the Bill.”

The motion was negatived.

**Mr. Vice-President :** Then we come to clause 6. Amendment No. 29 is disallowed as it has a negative effect.

**Mr. Vice-President :** Amendment No. 38 standing in the name of Mr. Naziruddin Ahmad. If you have no objection, we shall take it that the amendment has been read. You can make your remarks upon it.

**Mr. Naziruddin Ahmad :** Sir, I move:

“That in clause 6, in clause (a) of sub-section (1) of the proposed new section 290-A, the word ‘or’ occurring at the end, the whole of clause (b) of sub-section (1) and the proviso to sub-section (1) be deleted.” the words ‘shall be administered’, substituted.

*or, alternatively,*

That in clause 6, in clause (b) of sub-section (1) of the proposed new section 290-A, for the words ‘shall be administered’, the words “shall with their consent be administered” be substituted.

*or, alternatively,*

That in clause 6, in sub-section (1) of the proposed new section 290-A, for all the words beginning with ‘the Governor-General may Order direct’ to the end of clause (b) of the said sub-section, the following be substituted:—

‘the Governor-General may by Order direct that the State or the group of State shall be administered in all respects as if the State or the group of States were—

- (a) a Governor’s or a Chief Commissioner’s province, or
- (b) with the consent of the State or State concerned, as part of a Governor’s province.’ ”

I have to draw the attention of the House to clause 6 for the insertion of the proposed new section 290-A. With regard to clause (b) of sub-section (1) of Section 290-A, the part which I object to is that “the State or group of States shall be administered in all respects as if the State or the group of States formed part of a Governor’s or a Chief Commissioner’s province.....”. The point which I would like to urge is that the States have entered into an agreement which is called the merger agreement. Under the terms of that agreement, this proposal to treat them as if they formed part of a Governor’s or a Chief Commissioner’s province would not be legal. Sir, I have to submit that if it is done, with the consent of the State or the States concerned, everything will be all right. So, the first part of my amendment is that the whole clause (b) be deleted. The next part of the amendment is in the alternative form that it may remain with the addition of the words “with the consent of the State or States concerned”. The third alternative is the State is to be administered as an independent Governor’s province or a Chief Commissioner’s province or as a part of it only with their consent.

The reason which induced me to move these amendments is this: It appears that some States, compendiously described as Eastern States, entered into several agreements with the Central Government to the effect that the Ruler cedes to the Dominion Government “full and exclusive authority, jurisdiction and powers for the governance of the State and agrees to transfer the *administration* of the State to the Dominion Government” with effect from a certain date and the Dominion Government will be competent “to exercise such powers, authority and jurisdiction in such manner and through such agency as they may think fit”. The effect of this agreement to my mind is that the State or the Ruler on behalf of this State in each case has ceded to the Government of India the management or the “administration” of the State. That power which has been ceded to the Government of India may be exercised directly or through an agency. What I object to is that this management or rather administration cannot be exercised so as to destroy or alter the identity or the integrity of the State. What has happened is that these States, a large number of them, have been, by virtue of these agreements, actually amalgamated with the Province of Orissa. That, I submit, absolutely destroys their identity. Orissa is a Governor’s Province under the Government of India Act. So far as these small States are concerned, their Constitutions are rather obscure, but they are totally dissimilar to the constitution of the Province to which they are to be amalgamated. I submit that while entrusting the governance or rather the administration of the States to the Government of India to be carried on directly or through agency, no power has been given to convert these States into a part of a Governor’s province. They could be managed fully and with full authority by the Province of Orissa but without in the least affecting their integrity or character and cannot be merged as part of Orissa. That is the point which I wish to submit before the House. (*Interruption*).

With regard to the interjection of my honourable Friend, Mr. Ananthasayanam Ayyangar, he has pointed out that it is not actually merging the State in the Governor’s province but that is to be treated only “as if” it is part of a Governor’s province. I fail to see any real or practical distinction or difference between the two, though there is some verbal difference. In fact, these States are to be treated just like the province, and in effect these States are to be completely merged, or rather sub-merged, in the province. The words “as if” do not at all relieve the situation. To emphasise them would be to shut our eyes to reality—they are, in fact, already actually a part of Orissa.

The House will be pleased to consider the well known legal position. In fact, when the British left, these States did attain some kind of independence or sovereignty. This was conceded by the Honourable Dr. Ambedkar during the debate on the consideration of the Draft Constitution. Some honourable Members had suggested that these States had no sovereignty, but on a proper

[Mr. Naziruddin Ahmad]

consideration, the Honourable Doctor, presumably on behalf of the Government of India and in full concurrence with the Government, cleared the position, namely, that they have some kind of sovereignty. Call it a modified kind of sovereignty or inferior kind of sovereignty, but some kind of sovereignty they enjoyed.

With regard to this, there is a section in the Government of India Act, as adapted, enabling these States to accede and it may be by different documents. The accession, however, is strictly limited to the terms of the accession. That is absolutely clear from the Government of India Act, Section 6, Sub-section (2). In fact, the powers ceded or subjects acceded to must be clearly specified. In these circumstances, the question really will depend upon the construction you put upon the documents. One is the instrument of accession and the second is dated the 14th or the 15th of December 1947. There were a number of similar documents executed by many Rulers of States on or about these dates. These two documents are crucial and their terms would be extremely important and the question will depend upon what powers and jurisdiction and authority have been really conceded to the Government of India—keeping in view only one point, namely, the power to merge the State in a Governor's province as part thereof. Whether this power has been clearly, specifically or by necessary implication really granted is the only point. In interpreting the second document, which is really material, namely, the document dated the 14th or 15th of December, I find there are certain difficulties and I wish frankly to state them before the House both for and against the interpretation which I am seeking to introduce. In the preamble to this document, there is the expression—

“Whereas in the immediate interest of the State and the people the ruler is desirous that the administration should be integrated as early as possible with the province of Orissa....”

In fact, the Preamble clearly states a desire that the States concerned should be integrated with the Province of Orissa.

**Mr. Vice-President :** Though I do really admit that I have very little knowledge of these matters, it does seem to me as though you are talking in a general way. You ought to talk about your own amendment. This is not general discussion. These things would have been more appropriate in the general discussion.

**Mr. Naziruddin Ahmad :** I bow to your ruling but this, as I am going to point out, is directly concerned with the point.

**Mr. Vice-President :** I am afraid I do not agree with you. I must ask you to speak on the amendment.

**Mr. Naziruddin Ahmad :** These are the matters in the amendment. I am stating before the House the difficulty which lies against my contention. I must fairly state that also.

**Mr. Vice-President :** Quite so. You have your conviction, but the House has its opinion also, and probably the conviction of 299 members is much more important than the conviction of a single Member.

**Mr. Naziruddin Ahmad :** Of course so, but every Member has the right to speak.

**Mr. Vice-President :** You are not to argue but to follow my suggestion.

**Mr. Naziruddin Ahmad :** What is your suggestion?

**Mr. Vice-President :** That you speak on your amendment.

**Mr. Naziruddin Ahmad :** I submit, Sir, that I was speaking on my amendment.

**Mr. Vice-President :** Directly then, not in a round-about manner.

**Mr. Naziruddin Ahmad :** I am not round-about.

**Mr. Vice-President :** I am afraid you are arguing.

My opinion holds good here.

**Mr. Naziruddin Ahmad :** Of course, Sir. The difficulty is that the subject is a very intricate one. I submit that this desire for integration which is clearly against me appears only in the Preamble and not in the body of the agreement which is really the operative part, and it is a well known rule of interpretation that any wish or opinion or desire inserted in the Preamble is not effective and has no weight unless the same finds a place in the body of the document also. This rule is well established. I submit that in the body of article 1, which is really directly in point, it is said "full and exclusive authority and jurisdiction and powers" but only in relation to the governance or the *administration* of the State. The State only agrees for the above reasons that the *administration* should be transferred. There are two important points in this connection. One is that the agreement relates to the governance of the State and transfers the "administration". It does not transfer sovereignty, what remains of that sovereignty at the time of execution of the instrument of accession. Whatever is left as the remainder out of the rights that were carved out of that sovereignty, that remains. There is no mention of 'integration' in the body of the document. Only the right of administration has been transferred. I submit that in administering any property which is left to your care, you cannot alter its character. Supposing for instance any one is asked to administer a certain business, say a business in sugar. You ask a managing agent, or a Receiver or an Administrator to administer it. The managing agent or the Administrator has a quinine business. He converts the sugar business into a quinine business. Instead of producing something sweet, he produces some thing bitter. I submit, Sir, that you are going to do the same thing here. You are asked to administer a State with distinct and distinctive laws, rules, forms of constitution, forms of government. You want now to change them and convert it into a part of a Governor's province with different rules and constitution. It is not merely a physical combination between the two but a complete merger and a metamorphosis as a result of which the State loses its distinctive character and identity altogether. Suppose a man in difficulty left his wife to the care of a friend; the friend transfers the wife to some other friend, converting her as the latter's own wife. This is what is going to be done.

**Mr. Vice-President :** A not very happy illustration !

**Mr. Naziruddin Ahmad :** The power to administer is a power to manage. In managing or administering a thing you cannot convert it to something else. That is the simple position. The Honourable Dr. Patel referred to certain legal opinion having been obtained for the States. There are opinions, not of in significant lawyers like me, but some very weighty opinions like those of Sir T. B. Sapru and others which are against the legality of the merger. They are clearly of opinion—I think the opinion has been circulated to the Government of India also that it is illegal.

**The Honourable Sardar Vallabhbhai J. Patel :** This Department keeps away from outside legal opinion.

**Mr. Naziruddin Ahmad :** Quite so, the question should be considered, independently of any outside opinion, on its merits by the House. I submit that there is a body of weighty opinion, and the matter should be carefully considered. In these circumstances I submit that item (b) of sub-clause (1) really goes against the provision in the Agreement. I submit the Agreement should be carefully considered. I find there is nothing in the agreement which justifies the conversion, of a State of one kind to one completely of a different kind. This in short is the simple proposition which I submit. I must make it absolutely clear



[Mr. Naziruddin Ahmad]

that in doing so I am actuated only by the desire to regularise things. If there is anything irregular or if there is any lacuna, I think the Rulers should be asked in their own interests to execute another document just to transfer this right so as to treat their States as part of a Governor's province. Suppose at some future date.....

**Mr. Vice-President :** I have already given twenty minutes to the honourable Member.

**Mr. Naziruddin Ahmad :** Is it your desire that I should stop?

**Mr. Vice-President :** Yes.

**Mr. Naziruddin Ahmad :** Thank you, Sir.

**Shri T. T. Krishnamachari :** Sir, I move:

“That in clause 6, in sub-section (3) of the proposed new section 290-A, after the words ‘give such’ the word ‘supplemental’ be inserted.”

It is more or less a formal amendment. The words mentioned in the clause are ‘incidental’ and ‘consequential’. ‘Supplemental’ is also necessary.

**The Honourable Sardar Vallabhai J. Patel :** I accept it.

**Mr. Vice-President :** Amendment No. 64 to be moved by Shri Himatsingka.

**Shri Prabhudayal Himatsingka (West Bengal : General):** Sir, I move:

“That in clause 6, in the proposed new section 290-B, for the words ‘by the Government of’ the words ‘in all respects by’ be substituted.”

Section 290-A makes provision for the administration of certain acceding States which are being tacked on to the Chief Commissioner's provinces or Governor's provinces. This is the contrary case where any part of the area included in a Chief Commissioner's province is to be tacked on to some acceding State. I am therefore suggesting that it shall be administered in all respects, so that there may be no doubt as to the authority of the state to which it is tacked on, to administer in all respects, executive and legislative authority and other authorities. This will be on par with the previous provision.

**The Honourable Sardar Vallabhbhai J. Patel :** I accept it.

**Shri T. T. Krishnamachari :** Sir, I move:

“That in clause 6, in sub-section (2) of the proposed new section 290-B, after the words ‘contain such’ the word ‘supplemental’ be inserted.”

This is similar to the previous amendment, moved by me and I hope the House will accept it.

**Mr. Vice-President :** Clause 6 is now open for general discussion. I shall call upon the States' people because they are the people who are principally concerned. Mr. Gopikrishna Vijayavargiya. I am sorry I cannot give you too much time.

**Shri Gopikrishna Vijayavargiya [United States of Gwalior-Indore-Malwa (Madhya-Bharat)] :** Mr. Vice-President, Sir, I am not taking much of the time of the House and particularly I have to reply to the amendment moved here by Mr. Naziruddin Ahmad. I come from a State and I say it is not the rulers but it is the States' people who are most concerned in this affair. It is not a legal question really, although law is required everywhere, but it is a political question. We do not want to divide this country into so many pieces and so many principalities and, therefore, it has been a consistent demand of the people of the States that the several States must go and we should form one India, and so whatever the States Ministry has done and

whatever agreements have been entered into, they are in the interests of the people. After all, the people of the so-called British Indian Provinces and the States are all one, and therefore whatever has been done is in the interests of the country. I must say, Sir, that the words 'as if' are quite sufficient from the legal view point and it maintains whatever little distinction is necessary. I rather wish that these states should be completely obliterated from the face of India and not even this distinction should be maintained, and therefore, I will say that all these legal objections to this section must go and we must pass this section as it is here.

**Shri Ratan Lal Malaviya** (C. P. & Berar : States): \* [Mr. Vice-President, Sir, I rise to support Honourable Sardar Patel's Bill seeking to amend the Government of India Act, 1935, and specially clause 6. The truth is that the Chhattisgarh States had an earnest desire that all of them should be merged in order that they may share in the progress being made by the provinces and also to make their own contribution to the progress of the country as a whole. When, on 14th December 1947, Honourable Sardar Patel reached Kattak, the representative of the Chhattisgarh States submitted to him a memorandum requesting for an early merger of the States on the lines followed in merging certain states in Orissa. I am glad that the Chhattisgarh States have been merged in C. P. On the 1st January, every where in the States, the merger celebrations were held and there was rejoicing among the people. After 1st January, *i.e.*, after the States were merged, the Provincial Government tried its best to bring about improvement in the States and took certain measures in quick succession for their development which gave us satisfaction that the merger had been beneficial to us. But the Provincial Government could not pull on well with the representatives of the States. There arose there from some trouble which still continues. The amendment Act, which is before the House should be passed so that the State representatives may have the right to advise the Provincial Government and the State administration may be conducted in the light of their advice. On the 1st January, *i.e.*, one month after the merger, an Advisory Board for the States in Orissa was formed and their representatives were also taken in the Executive Council. But the C. P. Government could not do the same. The representatives of the States in C. P. tried for the formation of such a board. If C. P. had formed an Advisory Council to secure the co-operation in the matter of the State administration and had taken on the board some state representatives, there would have been no discontent. It may be that there were difficulties owing to which the C. P. Government did not form such a board. But with the acceptance of this clause the difficulties, if any, would be removed.

Sir, in this connection I may inform you that since our representatives were not in any way associated with the Government of the Central Provinces, it happened that the reports submitted by State officials against our workers,—and I may add these were responsible workers,—were accepted by the Government in due course. Naturally this led to some trouble in the initial stages.

Besides, as our representatives were not associated with the administration, many excesses were committed in the realisation of the land revenue. When we approached the Prime Minister and the Government with our grievances, the officials felt annoyed with us and started cases against our workers, and I may add that a number of workers have recently been sentenced to imprisonment. Similarly, rates in respect of forest were considerably enhanced which caused considerable discontent in the States. The facilities which the States previously enjoyed were also curtailed and this too created resentment. If the Provincial Government had cared to secure our co-operation, as would be obligatory in future by virtue of this clause, the difficulties which we are

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\* [ ] Translation of Hindustani speech.

[Shri Ratan Lal Malaviya]

facing today and the conditions that have been created would not at all have been there.

With the passage of this clause, the representative of the people would be able to render some services to the people and the people would have an opportunity of conveying their wishes to the Government. With these words, Sir, I commend clause 6 of the Bill and express my gratitude to Honourable Sardar Patel for bringing it forward.]

**Mr. Vice-President :** Sardar Patel, do you wish to say anything?

**The Honourable Sardar Vallabhbhai J. Patel:** I have nothing to say.

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

Amendment No. 38 standing in the name of Mr. Naziruddin Ahmad:

The question is:

“That in clause 6, in clause (a) of sub-section (1) of the proposed new section 290-A, the word ‘or’ occurring at the end, the whole of clause (b) of sub-section (1) and the proviso to sub-section (1) be deleted.”

*or, alternatively,*

That in clause 6, in clause (b) of sub-section (1) of the proposed new section 290-A; for the words ‘shall be administered’, the words “shall with their consent be administered” be substituted.

*or, alternatively,*

That in clause 6, in sub-section (1) of the proposed new section 290-A; for all the words beginning with ‘the Governor General may by Order direct’ to the end of clause(b) of the said sub-section, the following be substituted:—

‘the Governor-General may by Order direct that the State or the group of States shall be administered in all respects as if the State or the group of States were—

- (a) a Governor’s or a Chief Commissioner’s province, or
- (b) with the consent of the State or States concerned, as part of a Governor’s province.’ ”

The amendment was negatived.

**Mr. Vice-President :** Amendment No. 56 standing in the name of Mr. T. T. Krishnamachari.

The question is:

“That in clause 6, in sub-section (3) of the proposed new section 290-A, after the words ‘give such’ the word ‘supplemental’ be inserted.”

The amendment was adopted.

**Mr. Vice-President :** Amendment no. 64 moved by Mr. Prabhudayal Himatsingka.

The question is:

“That in clause 6, in the proposed new section 290-B, for the words ‘by the Government of’ the words ‘in all respects by’ be substituted.”

The amendment was adopted.

**Mr. Vice-President :** Amendment No. 75 standing in the name of Mr. T. T. Krishnamachari.

The question is:

“That in clause 6, in sub-section (2) of the proposed new section 290-B, after the words ‘contain such’ the word ‘supplemental’ be inserted.”

The amendment was adopted.

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

“That clause 6, as amended, stand part of the Bill.”

The motion was adopted.

Clause 6, as amended, was added to the Bill.

**Mr. Vice-President :** We take up clause 7. Amendment No. 80 standing in the name of Mr. T. T. Krishnamachari.

**Shri T. T. Krishnamachari :** Mr. Vice-President, Sir, I move :

“That in sub-clause (a) of clause 7, in the proposed paragraph 34 of the Federal Legislative List, the words ‘trade and commerce (whether or not within a province) in, and production, supply and distribution of, products of such industries’ be deleted.”

Sir, the reason for this amendment primarily was different; but now, in view of the fact that article 2 has undergone a change and also in view of the fact that my honourable Friend Mr. Govind Vallabh Pant is going to move amendments numbers 87 and 88, this will be necessary in order to clarify the position, because the words that are now sought to be omitted are being put in List III of Schedule 7, by the amendments Nos. 87 and 88. I hope the House will accept this amendment.

**The Honourable Pandit Govind Ballabh Pant :** With your permission, Sir, I should like to move....

**Mr. Vice-President :** All the three amendments?

**The Honourable Pandit Govind Ballabh Pant :** Yes, Sir: amendments 84, 87 and 88. I move:

“That in sub-clause (b) of clause 7, in the proposed paragraph 27 of the Provincial Legislative List, for the words ‘34 of List I’ the words ‘31 (A) of List III’ be substituted.”

“That in sub-clause (c) of clause 7, in the proposed paragraph 29 of the Provincial Legislative List, for the words and figures ‘34 of List I’, the words and figures ‘31-A of List III’ be substituted.”

“That in clause 7, the following new sub-clause be inserted at the end:—

‘(d) after paragraph 31 of the Concurrent Legislative list the following paragraph shall be inserted as paragraph 31(A) :—

31(A). Trade and commerce in, and production, supply and distribution of, products of industries, the development of which is declared by Dominion law to be expedient in the public interest under paragraph 34 of List I.’ ”

Sir, all the four amendments Nos. 80, 84, 87 and 88 are inter-connected and inter-linked and they must stand or fall together. According to the Bill, development of industries where development under Dominion control is declared by Dominion law to be expedient in the public interest, regulation and control of such industries, trade and commerce (whether or not within a province) in, and production, supply and distribution of, products of such industries, were to be included in List I. That is, all these subjects were to be brought within the exclusive jurisdiction of the Federal Legislature and the Federal Government. Now, that would have led to several other difficulties and complications. We all realise that so far as development of industries, where development under Dominion control is declared by Dominion law to be expedient in the public interest and regulation and control of such industries should vest in the Centre. According to the entry already contained in the Federal Legislative List, development of industries where development under Dominion control is declared by Dominion law to be expedient in the public interest, is already included and there is no intention of making any

[The Honourable Pandit Govind Ballabh Pant]

change so far as that is concerned. But, as proposed in this amendment regulation and control of such industries should also be placed under the jurisdiction of the Federal Legislature. So, so far as the first two parts of this clause are concerned, they will stand as they are. But with respect to the rest, that is, trade and commerce (whether or not within a province) in, and production, supply and distribution of, products of such industries, it is proposed by the series of amendments to which I referred at the outset, that these should be included in the Concurrent List and consequential changes should be made in the other amendments. So, the main point that is before the House is whether trade and commerce (whether or not within a province) in, and production, supply and distribution of, products of such industries should or should not be transferred from this class to List III, that is, instead of being included in List I they should form part of List III.

I think honourable Members will agree that the amendments that I am proposing will serve the purpose which the original clause had in view fully and will at the same time avoid other difficulties and complications which might arise if these items were not included in the Concurrent List. For, by including these in the Concurrent List, the power is vested in the Centre to legislate with regard to these matters. Power is also vested by virtue of clause 2, which has already been amended, to appoint agents directly for the administration of any of these subjects so that the Centre can have plenary, comprehensive and if it so chooses even exclusive control with regard to these matters. But, whatever the Centre may do, I venture to submit that it will still be necessary for the provinces to exercise a number of functions within their own provincial boundaries with regard to these matters. So, if these are made the exclusive charge of the Centre, then, the provinces will not be free to discharge the duties and obligations which will necessarily devolve on them. In order to enable the provinces to play their part subject to the over-riding powers that will now vest in the Centre, it is necessary to include these items in the Concurrent List and that is what I propose. Even now when we have got the Essential Supplies Act, the Centre generally frames a few basic rules and leaves the rest to the provinces. We in the provinces have been issuing orders rules and regulations with regard to these matters in our respective provinces. Whatever be the position hereafter, it will still be necessary for the provinces to exercise these powers. In our own province for example, we propose to introduce a bill so that the distribution of building materials may be regulated, that no steel or iron or coal etc. be supplied for the purpose of any building which is likely to cost more than Rs. 25,000. That is under our consideration. Now unless these items are included in the Concurrent List, we have no power to introduce such a bill in our Legislature. Besides, as I said, if these items are placed in List I, the Centre will not find it possible to administer these subjects in an efficient way. They require a very extensive network and I think it is not possible for the Centre to manage these things without the active co-operation and support of the provinces. So I propose that the amendments to which I referred at the outset be accepted unanimously by the House.

**Mr. Vice-President :** There are two amendments which have to be considered further. The one is No. 9 in the name of Mr. Naziruddin Ahmad which is disallowed as verbal.

**Mr. Naziruddin Ahmad :** It should be considered by the Draftsmen.

**Mr. Vice-President :** I suppose it will be. Is it necessary to hold a general discussion on this clause?

**Honourable Members :** No.

**Mr. Vice-President :** Then I shall put the amendments to vote one after another.

The question is:

“That in sub-clause (a) of clause 7, in the proposed paragraph 34 of the Federal Legislative List, the words ‘trade and commerce (whether or not within a province) in, and production, supply and distribution of, products of such industries’ be deleted.”

The amendment was adopted.

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

“That in sub-clause (b) of clause 7, in the proposed paragraph 27 of the Provincial Legislative List, for the words ‘34 of List I’, the words ‘31-A of List III’ be substituted.”

The amendment was adopted.

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

“That in sub-clause (c) of clause 7, in the proposed paragraph 29 of the Provincial Legislative List, for the words and figures ‘34 of List I’, the words and figures ‘31-A of List III’ be substituted.”

The amendment was adopted.

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

“That in clause 7, the following new sub-clause be inserted at the end:—

(d) after paragraph 31 of the Concurrent Legislative List the following paragraph shall be inserted as paragraph 31(A):—

31(A). Trade and commerce in, and production, supply and distribution of, products of industries, the development of which is declared by Dominion law to be expedient in the public interest under paragraph 34 of List I.’ ”

The amendment was adopted.

**Mr. Vice-President :** The motion is:

“That clause 7, as amended, stand part of the Bill.”

The motion was adopted.

Clause 7, as amended, was added to the Bill.

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

“That clause 1 and the Long Title form part of the Bill.”

There is an amendment to this.

**Shri. T. T. Krishnamachari :** Mr. Vice-President, I move:

“That for clause 1 the following clause be substituted:—

Short title and Commencement. 1. (1) This Act may be called the Government of India (Amendment) Act, 1949. (2) It shall come into force on the 15th day of January, 1949.”

Sir, the first sub-clause is necessary because the date has to altered and the second one precisely states when the Act will come into force.

Sir, I move.

**Mr. Vice-President :** I now put the amendment to vote. The question is:

“That for clause 1 the following clause be substituted:—

Short title and Commencement. 1. (1) This Act may be called the Government of India (Amendment) Act, 1949. (2) It shall come into force on the 15th day of January, 1949.”

The amendment was adopted.

**Mr. Vice-President :** The motion is:

“That clause 1, as amended, stand part of the Bill.”

The motion was adopted.

Clause 1, as amended, was added to the Bill.

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

“That the Long Title and the Preamble stand part of the Bill.”

The motion was adopted.

**The Honourable Sardar Vallabhbhai J. Patel :** Sir, I move:

“That the clauses 1(A), 2, 3 and 4 be renumbered as clauses 2, 3, 4 and 5 respectively.”

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

“That the clauses 1(A), 2, 3 and 4 be renumbered as clauses 2, 3, 4 and 5 respectively.”

The motion was adopted.

**The Honourable Sardar Vallabhbhai J. Patel :** Sir, I move:

“That the Bill, as amended, be passed.”

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

“The Bill, as amended, be passed.”

The motion was adopted.

**Mr. Vice-President :** The House stands adjourned till ten tomorrow.

The Assembly then adjourned till Ten of the Clock on Thursday, the 6th January 1949.

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